

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 853

Introduced by Banking, Commerce and Insurance Committee: Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4.

Read first time January 11, 2008

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-349, 44-356,
2 44-789, 44-1101, 44-1103, 44-1105, 44-1106, 44-1107,
3 44-1108, 44-1109, 44-1110, 44-1111, 44-1112, 44-1113,
4 44-1114, 44-1115, 44-1521, 44-32,106, 44-3901, 44-3902,
5 44-3904, 44-3909, 44-3910, 44-3911, 44-4064, 44-6009,
6 and 44-6016, Reissue Revised Statutes of Nebraska,
7 sections 13-206 and 44-7508.02, Revised Statutes
8 Cumulative Supplement, 2006, and sections 44-1102,
9 44-1104, and 44-4521, Revised Statutes Supplement,
10 2007; to change provisions relating to rules and
11 regulations, certain insurance policy requirements,
12 insurance coverage for bone and joint treatment, the
13 Viatical Settlements Act, the Unfair Insurance Trade

1 Practices Act, holding companies, health maintenance
2 organizations, the Insurance Producers Licensing Act,
3 long-term care insurance, the Insurers and Health
4 Organizations Risk-Based Capital Act, rates and forms,
5 and financial conglomerates; to provide powers and duties
6 for the Director of Insurance; to define and redefine
7 terms; to harmonize provisions; to provide an operative
8 date; and to repeal the original sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-206, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 13-206 (1) The director shall adopt and promulgate rules
4 and regulations for the approval or disapproval of the program
5 proposals submitted pursuant to section 13-205 taking into account
6 the economic need level and the geographic distribution of the
7 population of the community development area. The director shall
8 also adopt and promulgate rules and regulations concerning the
9 amount of the tax credit for which a program shall be certified.
10 The tax credits shall be available for contributions to a certified
11 program which may qualify as a charitable contribution deduction
12 on the federal income tax return filed by the business firm or
13 individual making such contribution. The decision of the department
14 to approve or disapprove all or any portion of a proposal shall
15 be in writing. If the proposal is approved, the maximum tax credit
16 allowance for the certified program shall be stated along with
17 the approval. The maximum tax credit allowance approved by the
18 department shall be final for the fiscal year in which the program
19 is certified. A copy of all decisions shall be transmitted to
20 the Tax Commissioner. A copy of all credits allowed to business
21 firms under sections 44-150 and 77-908 shall be transmitted to the
22 Director of Insurance.

23 (2) For all business firms and individuals eligible
24 for the credit allowed by section 13-207, except for insurance
25 companies paying premium and related retaliatory taxes in this

1 state pursuant to section 44-150 or 77-908, the Tax Commissioner
2 shall provide for the manner in which the credit allowed by section
3 13-207 shall be taken and the forms on which such credit shall be
4 allowed. The Tax Commissioner shall adopt and promulgate rules and
5 regulations for the method of providing tax credits. The Director
6 of Insurance shall provide for the manner in which the credit
7 allowed by section 13-207 to insurance companies paying premium
8 and related retaliatory taxes in this state pursuant to sections
9 44-150 and 77-908 shall be taken and the forms on which such credit
10 shall be allowed. The Director of Insurance ~~shall~~ may adopt and
11 promulgate rules and regulations for the method of providing the
12 tax credit. The Tax Commissioner shall allow against any income
13 tax due from the insurance companies paying premium and related
14 retaliatory taxes in this state pursuant to section 44-150 or
15 77-908 a credit for the credit provided by section 13-207 and
16 allowed by the Director of Insurance.

17 Sec. 2. Section 44-349, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-349 No policy or contract of insurance or renewal
20 thereof shall be made, issued, used, or delivered by any assessment
21 insurer in this state unless it states on its face ~~whether it is~~
22 ~~issued by a stock, mutual, reciprocal, assessment, or fraternal~~
23 ~~company, PROVIDED, that any insurer organized under special charter~~
24 ~~provisions may so indicate upon its policy and may add a statement~~
25 ~~of the plan under which it operates in this state.~~ that it is

1 issued by an assessment insurer.

2 Sec. 3. Section 44-356, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-356 ~~Whoever violates~~ (1) A violator of any of the
5 provisions of sections section 44-353 to 44-355 shall be fined in
6 any sum not less than twenty dollars nor more than one hundred
7 dollars.

8 (2) A violation of any of the provisions of section
9 44-354 or 44-355 shall be an unfair trade practice in the business
10 of insurance subject to the Unfair Insurance Trade Practices Act.

11 Sec. 4. Section 44-789, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-789 Notwithstanding section 44-3,131, no group policy
14 of accident or health insurance, health services plan, or health
15 maintenance organization subscription shall be offered for sale in
16 this state on or after ~~July 15, 1998,~~ January 1, 2009, unless such
17 policy, plan, subscription, or contract which specifically provides
18 coverage for surgical and nonsurgical treatment involving a bone
19 or joint of the skeletal structure includes the option to provide
20 coverage, for an additional premium and subject to the insurer's
21 standard of insurability, for the reasonable and necessary medical
22 treatment of temporomandibular joint disorder and craniomandibular
23 disorder. The purchaser of the group policy of accident or health
24 insurance, health service plan, or health maintenance organization
25 subscription shall accept or reject the coverage in writing on the

1 application or an amendment thereto for the master group policy
2 of accident or health insurance, health service plan, or health
3 maintenance organization subscription. Benefits may be subject
4 to the same preexisting conditions, limitations, deductibles,
5 copayments, and coinsurance that generally apply to any other
6 sickness. The maximum lifetime benefits for temporomandibular
7 joint disorder and craniomandibular disorder treatment shall be
8 no less than two thousand five hundred dollars. Nothing in this
9 section shall prevent an insurer from including such coverage for
10 temporomandibular joint disorder and craniomandibular disorder as
11 part of a policy's basic coverage instead of offering optional
12 coverage. for the same diagnostic or surgical procedure involving
13 any other bone or joint of the face, neck, or head through the use
14 of an endorsement or similar amendment. Such endorsement may limit
15 benefits for services to an amount of not less than two thousand
16 five hundred dollars.

17 Sec. 5. Section 44-1101, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-1101 Sections 44-1101 to 44-1116 and sections 13 and
20 16 of this act shall be known and may be cited as the Viatical
21 Settlements Act.

22 Sec. 6. Section 44-1102, Revised Statutes Supplement,
23 2007, is amended to read:

24 44-1102 For purposes of the Viatical Settlements Act:

25 (1) Advertising means any written, electronic, or printed

1 communication or any communication by means of recorded telephone
2 messages or transmitted on radio, television, the Internet,
3 or similar communications media, including film strips, motion
4 pictures, and videos, published, disseminated, circulated, or
5 placed directly before the public, ~~directly or indirectly~~, in this
6 state, for the purpose of creating an interest in or inducing a
7 person to sell, assign, devise, bequest, or transfer the death
8 benefit or ownership of a life insurance policy pursuant to a
9 viatical settlement contract;

10 (2) Business of viatical settlements means an activity
11 involved in, but not limited to, the offering, ~~solicitation,~~
12 ~~negotiation, procurement, effectuation,~~ soliciting, negotiating,
13 procuring, effectuating, purchasing, investing, financing,
14 monitoring, tracking, underwriting, selling, transferring,
15 assigning, pledging, or hypothecating ~~of~~ or in any manner acquiring
16 an interest in a life insurance policy by means of a viatical
17 settlement contracts or purchase agreements, contract;

18 (3) Chronically ill means (a) being unable to perform at
19 least two activities of daily living, such as eating, toileting,
20 transferring, bathing, dressing, or continence; (b) requiring
21 substantial supervision to protect the individual from threats to
22 health and safety due to severe cognitive impairment; or (c) having
23 a level of disability similar to that described in subdivision
24 (3)(a) of this section as determined by the Department of Health
25 and Human Services;

1 (4) Department means the Department of Insurance;

2 (5) Director means the Director of Insurance;

3 (6) Financing entity means an underwriter, a placement
4 agent, a lender, a purchaser of securities, a purchaser of a
5 policy or certificate from a viatical settlement provider, a
6 credit enhancer, or any entity that has a direct ownership in a
7 policy or certificate that is the subject of a viatical settlement
8 contract (a) whose principal activity related to the transaction is
9 providing funds to effect the viatical settlement or purchase of
10 one or more viaticated policies and (b) who has an agreement in
11 writing with one or more licensed viatical settlement providers to
12 finance the acquisition of viatical settlement contracts. Financing
13 entity does not include a nonaccredited investor or viatical
14 settlement purchaser;

15 (7) Fraudulent viatical settlement act means:

16 (a) An an act or omission committed by any person who,
17 knowingly and with intent to defraud and for the purpose of
18 depriving another of property or for pecuniary gain, commits, or
19 permits his or her employees or agents to commit, any of the
20 following acts:

21 ~~(a)~~ (i) Presenting, causing to be presented, or preparing
22 with the knowledge or belief that it will be presented to or by a
23 viatical settlement provider, viatical settlement broker, viatical
24 settlement purchaser, financing entity, insurer, insurance broker,
25 insurance agent, or any other person, false material information,

1 or concealing material information, as part of, in support of, or
2 concerning a fact material to one or more of the following:

3 ~~(i)~~ (A) An application for the issuance of a viatical
4 settlement contract or insurance policy;

5 ~~(ii)~~ (B) The underwriting of a viatical settlement
6 contract or insurance policy;

7 ~~(iii)~~ (C) A claim for payment or benefit pursuant to a
8 viatical settlement contract or insurance policy;

9 ~~(iv)~~ (D) Premiums paid on an insurance policy;

10 ~~(v)~~ (E) Payments and changes in ownership or beneficiary
11 made in accordance with the terms of a viatical settlement contract
12 or insurance policy;

13 ~~(vi)~~ (F) The reinstatement or conversion of an insurance
14 policy;

15 ~~(vii)~~ (G) The solicitation, offer, effectuation, or sale
16 of a viatical settlement contract or insurance policy;

17 ~~(viii)~~ (H) The issuance of written evidence of a viatical
18 settlement contract or insurance; or

19 ~~(ix)~~ (I) A financing transaction; or

20 ~~(x)~~ (ii) Employing any plan, financial structure, device,
21 scheme, or artifice to defraud related to viaticated policies;

22 (b) In the furtherance of a fraud or to prevent the
23 detection of a fraud:

24 (i) Removing, concealing, altering, destroying, or
25 sequestering from the director the assets or records of a licensee

1 or other person engaged in the business of viatical settlements;

2 (ii) Misrepresenting or concealing the financial
3 condition of a licensee, financing entity, insurer, or other
4 person;

5 (iii) Transacting the business of viatical settlements in
6 violation of laws requiring a license, certificate of authority,
7 or other legal authority for the transaction of the business of
8 viatical settlements; or

9 (iv) Filing with the director or the chief insurance
10 regulatory official of another jurisdiction a document containing
11 false information or otherwise concealing information about a
12 material fact from the director;

13 (c) Presenting, causing to be presented, or preparing
14 with the knowledge or reason to believe that it will be presented,
15 to or by a viatical settlement provider, viatical settlement
16 broker, insurer, insurance agent, financing entity, viatical
17 settlement purchaser, or any other person, in connection with
18 a viatical settlement transaction or insurance transaction, an
19 insurance policy, knowing the policy was fraudulently obtained by
20 the insured, owner, or any agent thereof;

21 (d) Embezzlement, theft, misappropriation, or conversion
22 of money, funds, premiums, credits, or other property of a
23 viatical settlement provider, insurer, insured, viator, insurance
24 policyowner, or any other person engaged in the business of
25 viatical settlements or insurance; ~~or~~

1 (e) Recklessly entering into, negotiating, brokering, or
2 otherwise dealing in a viatical settlement contract, the subject of
3 which is a life insurance policy that was obtained by presenting
4 false information concerning any fact material to the policy or
5 by concealing, for the purpose of misleading another, information
6 concerning any fact material to the policy, if the person or
7 persons intended to defraud the policy's issuer, the viatical
8 settlement provider, or the viator. Recklessly means engaging in
9 the conduct in conscious and clearly unjustifiable disregard of a
10 substantial likelihood of the existence of the relevant facts or
11 risks and such disregard involves a gross deviation from acceptable
12 standards of conduct;

13 (f) Facilitating the change of state of ownership of a
14 policy or certificate or the state of residency of a viator to a
15 state or jurisdiction that does not have a law similar to the act
16 for the express purposes of evading or avoiding the provisions of
17 the act; or

18 ~~(e)~~ (g) Attempting to commit, assisting, aiding, or
19 abetting in the commission of, or conspiring to commit the acts or
20 omissions specified in this subdivision;

21 (8) Life insurance producer means any person licensed in
22 this state as a resident or nonresident insurance producer who has
23 received qualification or authority for life insurance coverage or
24 a life line of coverage pursuant to subdivision (1)(a) of section
25 44-4054;

1 ~~(8)~~ (9) Person means a natural person or a legal
2 entity, including an individual, a partnership, a limited liability
3 company, an association, a trust, or a corporation;

4 ~~(9)~~ (10) Policy means an individual or group policy,
5 group certificate, contract, or arrangement of life insurance
6 affecting the rights of owned by a resident of this state, ~~or~~
7 bearing a reasonable relation to this state, regardless of whether
8 delivered or issued for delivery in this state;

9 ~~(10)~~ (11) Related provider trust means a titling trust or
10 other trust established by a licensed viatical settlement provider
11 or a financing entity for the sole purpose of holding the ownership
12 or beneficial interest in purchased policies in connection with
13 a financing transaction. The trust shall have a written agreement
14 with the licensed viatical settlement provider under which the
15 licensed viatical settlement provider is responsible for ensuring
16 compliance with all statutory and regulatory requirements and under
17 which the trust agrees to make all records and files related to
18 viatical settlement transactions available to the director as if
19 those records and files were maintained directly by the licensed
20 viatical settlement provider;

21 ~~(11)~~ (12) Special purpose entity means a corporation,
22 partnership, trust, limited liability company, or other similar
23 entity formed solely to provide, either directly or indirectly,
24 access to institutional capital markets;

25 (a) For ~~for~~ a financing entity or licensed viatical

1 settlement provider; or

2 (b) (i) In connection with a transaction in which the
3 securities in the special purposes entity are acquired by the
4 viator or by qualified institutional buyers as defined in Rule
5 144A of the federal Securities Act of 1933, as such act existed on
6 January 1, 2008; or

7 (ii) The securities pay a fixed rate of return
8 commensurate with established asset-backed institutional capital
9 markets;

10 ~~(12)~~ (13) Terminally ill means having an illness or
11 sickness that can reasonably be expected to result in death in
12 twenty-four months or less;

13 ~~(13)~~ (14) Viatical settlement broker means a person,
14 including a life insurance producer as provided in subdivision
15 (1) (b) of section 44-1103, who, working exclusively that on
16 behalf of a viator and for a fee, commission, or other
17 valuable consideration, offers or attempts to negotiate viatical
18 settlement contracts between a viator and one or more viatical
19 settlement providers or one or more viatical settlement brokers.

20 Notwithstanding the manner in which the viatical settlement
21 broker is compensated, a viatical settlement broker is deemed to
22 represent only the viator, and not the insurer or the viatical
23 settlement provider, and owes a fiduciary duty to the viator to
24 act according to the viator's instructions and in the best interest
25 of the viator. ~~Viatical settlement broker includes a licensed~~

1 ~~life insurance producer that meets the requirements of section~~
2 ~~44-1103.~~ Viatical settlement broker does not include an attorney,
3 a certified public accountant, or a financial planner accredited
4 by a nationally recognized accreditation agency who is retained to
5 represent the viator and whose compensation is not paid directly or
6 indirectly by the viatical settlement provider or purchaser;

7 ~~(14)~~ (15)(a) Viatical settlement contract means a written
8 agreement between a viator and a viatical settlement provider or
9 any affiliate of the viatical settlement provider establishing
10 the terms under which compensation or anything of value will be
11 paid, which compensation or value is less than the expected death
12 benefit of the ~~insurance policy, or certificate,~~ in return for
13 the viator's present or future assignment, transfer, sale, devise,
14 or bequest of the death benefit or ownership or any portion of
15 the insurance policy or certificate of insurance; ~~—~~ A viatical
16 settlement contract also includes a contract for a loan or other
17 financing transaction secured primarily by an individual or group
18 life insurance policy, other than a loan by a life insurance
19 company pursuant to the terms of the life insurance contract, or a
20 loan secured by the cash value of a policy. A viatical settlement
21 contract includes an agreement to transfer ownership or change the
22 beneficiary designation at a later date regardless of the date that
23 compensation is paid to the viator;

24 (b) Viatical settlement contract includes a premium
25 finance loan made for a life insurance policy by a lender to

1 a viator on, before, or after the date of issuance of the policy
2 if:

3 (i) The viator or the insured receives on the date of the
4 premium finance loan a guarantee of a future viatical settlement
5 value of the policy; or

6 (ii) The viator or the insured agrees on the date of the
7 premium finance loan to sell the policy or any portion of its death
8 benefit on any date following the issuance of the policy.

9 (c) Viatical settlement contract does not include:

10 (i) A policy loan or accelerated death benefit made by
11 the insurer pursuant to the policy's terms;

12 (ii) A loan, the proceeds of which are used solely to
13 pay:

14 (A) Premiums for the policy; or

15 (B) The costs of the loan, including, without limitation,
16 interest, arrangement fees, utilization fees and similar fees,
17 closing costs, legal fees and expenses, trustee fees and expenses,
18 and third-party collateral provider fees and expenses, including
19 fees payable to letter-of-credit issuers;

20 (iii) A loan made by a bank or other licensed financial
21 institution in which the lender takes an interest in a life
22 insurance policy solely to secure repayment of a loan or, if
23 there is a default on the loan and the policy is transferred, the
24 transfer of such a policy by the lender, if the default itself is
25 not pursuant to an agreement or understanding with any other person

1 for the purpose of evading regulation under the act;

2 (iv) A premium finance loan not described in subdivision
3 (15) (b) of this section;

4 (v) An agreement where all the parties (A) are closely
5 related to the insured by blood or law, (B) have a lawful
6 substantial economic interest in the continued life, health, and
7 bodily safety of the person insured, or (C) are trusts established
8 primarily for the benefit of such parties;

9 (vi) Any designation, consent, or agreement by an insured
10 who is an employee of an employer in connection with the purchase
11 by the employer, or trust established by the employer, of life
12 insurance on the life of the employee;

13 (vii) A bona fide business succession planning
14 arrangement:

15 (A) Between one or more shareholders in a corporation or
16 between a corporation and one or more of its shareholders or one or
17 more trusts established by its shareholders;

18 (B) Between one or more partners in a partnership or
19 between a partnership and one or more of its partners or one or
20 more trusts established by its partners; or

21 (C) Between one or more members in a limited liability
22 company or between a limited liability company and one or more of
23 its members or one or more trusts established by its members;

24 (viii) An agreement entered into by a service recipient,
25 or a trust established by the service recipient, and a service

1 provider, or a trust established by the service provider, who
2 performs significant services for the service recipient's trade or
3 business; or

4 (ix) Any other contract, transaction, or arrangement
5 exempted from the definition of viatical settlement contract by the
6 director based on a determination that the contract, transaction,
7 or arrangement is not of the type intended to be regulated under
8 the act;

9 ~~(15)~~ (16) (a) Viatical settlement provider means a person,
10 other than a viator, that enters into or effectuates a viatical
11 settlement contract.

12 (b) Viatical settlement provider does not include:

13 ~~(a)~~ (i) A bank, savings bank, savings and loan
14 association, credit union, or other licensed lending institution
15 that takes an assignment of a life insurance policy solely as
16 collateral for a loan;

17 (ii) A premium finance company making premium finance
18 loans that takes an assignment of a life insurance policy solely as
19 collateral for a loan;

20 ~~(b)~~ (iii) The issuer of a the life insurance policy;
21 ~~providing accelerated benefits under and pursuant to the contract;~~

22 ~~(e)~~ (iv) An authorized or eligible insurer that provides
23 stop-loss coverage or financial guaranty insurance to a viatical
24 settlement provider, purchaser, financing entity, special purpose
25 entity, or related provider trust;

1 ~~(d)~~ (v) A natural person who enters into or effectuates
 2 no more than one agreement in a calendar year for the transfer of
 3 life insurance policies for any value less than the expected death
 4 benefit;

5 ~~(e)~~ (vi) A financing entity;

6 ~~(f)~~ (vii) A special purpose entity;

7 ~~(g)~~ (viii) A related provider trust;

8 ~~(h)~~ (ix) A viatical settlement purchaser; or

9 ~~(i)~~ An accredited investor or qualified institutional
 10 buyer as defined respectively in Regulation D, Rule 501, or Rule
 11 144A of the federal Securities Act of 1933, as the act existed
 12 on September 1, 2001, who purchases a viaticated policy from a
 13 viatical settlement provider;

14 (x) Any other person that the director exempts from the
 15 definition of viatical settlement provider;

16 ~~(16)~~ (17)(a) Viatical settlement purchaser means a person
 17 who ~~gives~~ provides a sum of money as consideration for a life
 18 insurance policy or an interest in the death benefits of a life
 19 insurance policy, or a person who owns or acquires or is entitled
 20 to a beneficial interest in a trust that owns a viatical settlement
 21 contract or is the beneficiary of a life insurance policy that has
 22 been or will be the subject of a viatical settlement contract, for
 23 the purpose of deriving an economic benefit.

24 (b) Viatical settlement purchaser does not include:

25 ~~(a)~~ (i) A licensee under the Viatical Settlements Act;

1 ~~(b)~~ (ii) An accredited investor or qualified
 2 institutional buyer as defined respectively in ~~Regulation D~~
 3 ~~Rule 501~~, Rule 501(a) or Rule 144A of the federal Securities Act of
 4 1933, as the act existed on ~~September 1, 2001~~, January 1, 2008;

5 ~~(c)~~ (iii) A financing entity;

6 ~~(d)~~ (iv) A special purpose entity; or

7 ~~(e)~~ (v) A related provider trust;

8 ~~(17)~~ (18) Viaticated policy means a life insurance policy
 9 or certificate that has been acquired by a viatical settlement
 10 provider pursuant to a viatical settlement contract; and

11 ~~(18)~~ (19) (a) Viator means the owner of a life insurance
 12 policy or a certificate holder under a group policy who resides
 13 in this state and who enters or seeks to enter into a viatical
 14 settlement contract. For purposes of the Viatical Settlements Act,
 15 a viator is not limited to an owner of a life insurance policy or
 16 a certificate holder under a group policy insuring the life of an
 17 individual with a terminal or chronic illness or condition except
 18 as specifically addressed. If there is more than one viator on a
 19 single policy and the viators are residents of different states,
 20 the transaction shall be governed by the law of the state in which
 21 the viator having the largest percentage ownership resides or, if
 22 the viators hold equal ownership, the state of residence of one of
 23 the viators agreed upon in writing by all the viators.

24 (b) Viator does not include:

25 ~~(a)~~ (i) A licensee under the act;

1 ~~(b) An accredited investor or (ii) A qualified~~
 2 institutional buyer as defined ~~respectively in Regulation D, Rule~~
 3 ~~501, or in~~ Rule 144A of the federal Securities Act of 1933, as the
 4 act existed on ~~September 1, 2001, January 1, 2008;~~

5 ~~(c) (iii) A financing entity;~~

6 ~~(d) (iv) A special purpose entity; or~~

7 ~~(e) (v) A related provider trust.~~

8 Sec. 7. Section 44-1103, Reissue Revised Statutes of
 9 Nebraska, is amended to read:

10 44-1103 (1) (a) A person shall not operate as a viatical
 11 settlement provider or viatical settlement broker without first
 12 obtaining a license from the director or the chief insurance
 13 regulatory official of the state of residence of the viator. If
 14 there is more than one viator on a single policy and the viators
 15 are residents of different states, the viatical settlement shall
 16 be governed by the law of the state in which the viator having
 17 the largest percentage ownership resides or, if the viators hold
 18 equal ownership, the state of residence of one viator agreed upon
 19 in writing by all viators.

20 ~~(b)(i) A licensed insurance producer who has received~~
 21 ~~qualification for a license in life insurance shall be exempt from~~
 22 ~~the requirements of subdivision (1)(a) of this section if:~~

23 ~~(A) The insurance producer is involved in no more than~~
 24 ~~five viatical settlements per year;~~

25 ~~(B) The insurance producer registers as a licensed~~

1 insurance producer involved in no more than five viatical
2 settlements per year;

3 ~~(C) The insurance producer makes such registration no~~
4 ~~later than three days following the referral of a potential~~
5 ~~settlement to a viatical settlement provider; and~~

6 ~~(D) The insurance producer meets the requirements set~~
7 ~~forth in subsections (4) through (7) of this section.~~

8 ~~(ii) A registration application made pursuant to this~~
9 ~~subdivision shall be accompanied by a registration fee as set forth~~
10 ~~in subsection (2) of this section.~~

11 ~~(iii) The director may suspend, revoke, or refuse to~~
12 ~~issue or renew a registration of an insurance producer pursuant~~
13 ~~to this subdivision for any of the grounds set forth in section~~
14 ~~44-1104.~~

15 (b)(i) A life insurance producer who has been duly
16 licensed as a resident insurance producer with a life line of
17 authority in this state or his or her home state for at least one
18 year and is licensed as a nonresident producer in this state shall
19 be deemed to meet the licensing requirements of this section and
20 shall be permitted to operate as a viatical settlement broker.

21 (ii) No later than thirty days after the first day of
22 operating as a viatical settlement broker, the life insurance
23 producer shall notify the director that he or she is acting as a
24 viatical settlement broker on a form prescribed by the director
25 and shall pay any applicable fee to be determined by the director.

1 Notification shall include an acknowledgment by the life insurance
2 producer that he or she will operate as a viatical settlement
3 broker in accordance with the Viatical Settlements Act.

4 (iii) The insurer that issued the policy being viaticated
5 shall not be responsible for any act or omission of a viatical
6 settlement broker or viatical settlement provider arising out
7 of or in connection with the viatical settlement transaction
8 unless the insurer receives compensation for the placement of a
9 viatical settlement contract from the viatical settlement provider
10 or viatical settlement broker in connection with the viatical
11 settlement contract.

12 (c) A licensed attorney, a certified public accountant,
13 or a financial planner accredited by a nationally recognized
14 accreditation agency who is retained to represent the viator and
15 whose compensation is not paid directly or indirectly by the
16 viatical settlement provider may negotiate viatical settlement
17 contracts on behalf of the viator without having to obtain a
18 license as a viatical settlement broker.

19 (2) Application for a viatical settlement provider or
20 viatical settlement broker license shall be made to the director
21 by the applicant on a form prescribed by the director. The
22 viatical settlement broker application shall be accompanied by a
23 fee established by the director of not to exceed forty dollars. The
24 viatical settlement provider application shall be accompanied by a
25 fee established by the director of not to exceed one thousand five

1 hundred dollars.

2 (3) All viatical settlement broker licenses shall expire
3 on the last day of the month of the licensed person's birthday in
4 the first year after issuance in which his or her age is divisible
5 by two and may be renewed upon payment of a fee established by
6 the director not to exceed forty dollars. All viatical settlement
7 provider licenses shall expire on the last day of April in each
8 year and may be renewed upon payment of a renewal fee established
9 by the director not to exceed one hundred dollars. Failure to pay
10 the fee by the renewal date results in expiration of the license.

11 (4) The applicant shall provide information on forms
12 required by the director. The director shall have authority, at any
13 time, to require the applicant to fully disclose the identity of
14 all stockholders, partners, officers, members, and employees, and
15 the director may, in the exercise of the director's discretion,
16 refuse to issue a license in the name of a legal entity if
17 not satisfied that any stockholder, partner, officer, member,
18 or employee thereof who may materially influence the applicant's
19 conduct meets the standards of the Viatical Settlements Act.

20 (5) A license issued to a legal entity authorizes all
21 partners, officers, members, and designated employees to act as
22 viatical settlement providers and viatical settlement brokers, as
23 applicable, under the license, and all those persons shall be named
24 in the application and any supplements to the application.

25 (6) Upon the filing of an application and the payment

1 of the license fee, the director shall make an investigation of
2 each applicant and issue a license if the director finds that the
3 applicant:

4 (a) If a viatical settlement provider, provides a
5 detailed plan of operation;

6 (b) Is competent and trustworthy and intends to act in
7 good faith in the capacity for which application for a license is
8 made;

9 (c) Has a good business reputation and has had
10 experience, training, or education so as to be qualified in the
11 business for which application for a license is made;

12 (d) If a viatical settlement broker or viatical
13 settlement provider, has demonstrated evidence of financial
14 responsibility in a format prescribed by the director through
15 either a surety bond executed and issued by an insurer authorized
16 to issue surety bonds in this state or a deposit of cash,
17 certificates of deposit, or securities or any combination thereof
18 in the amount of two hundred fifty thousand dollars;

19 (i) The director may ask for evidence of financial
20 responsibility at any time the director deems necessary;

21 (ii) Any surety bond issued pursuant to subdivision (d)
22 of this subsection shall be in the favor of this state and shall
23 specifically authorize recovery by the director on behalf of any
24 person in this state who has sustained damages as a result of an
25 erroneous act, failure to act, conviction of fraud, or conviction

1 of unfair practices of the viatical settlement provider or viatical
2 settlement broker; and

3 (iii) Notwithstanding any provision of this section to
4 the contrary, the director shall accept as evidence of financial
5 responsibility proof that financial instruments in accordance with
6 the requirements of subdivision (d) of this subsection have been
7 filed with a state where the applicant is licensed as a viatical
8 settlement provider or viatical settlement broker;

9 ~~(d)~~ (e) If a legal entity, provides a certificate of good
10 standing from the state of its domicile; and

11 ~~(e)~~ (f) If a viatical settlement provider or viatical
12 settlement broker, provides an antifraud plan that meets the
13 requirements of subsection (7) of section 44-1112.

14 (7) A licensee shall provide to the director new
15 or revised information about officers, ten-percent or more
16 stockholders, partners, directors, members, or designated employees
17 within thirty days after the change.

18 (8) An individual licensed as a viatical settlement
19 broker shall complete on a biennial basis fifteen hours of
20 training related to viatical settlements and viatical settlement
21 transactions, except that a life insurance producer who is
22 operating as a viatical settlement broker pursuant to subsection
23 (1) of this section shall not be subject to the requirements of
24 this subsection.

25 Sec. 8. Section 44-1104, Revised Statutes Supplement,

1 2007, is amended to read:

2 44-1104 (1) The director may suspend, revoke, or refuse
3 to issue or renew a license issued under the Viatical Settlements
4 Act or that of a life insurance producer operating as a viatical
5 settlement broker under subdivision (1)(b) of section 44-1103 if
6 the director finds that:

7 (a) There was any material misrepresentation in the
8 application for the license;

9 (b) The applicant or licensee or any officer, partner,
10 member, or key management personnel is subject to a final
11 administrative action or is otherwise shown to be untrustworthy
12 or incompetent;

13 (c) The viatical settlement provider demonstrates a
14 pattern of unreasonable payments to viators;

15 (d) The applicant or licensee or any officer, partner,
16 member, or key management personnel has been found guilty of, or
17 has pleaded guilty or nolo contendere to, any felony or a Class
18 I, II, or III misdemeanor, regardless of whether a judgment of
19 conviction has been entered by the court;

20 (e) The viatical settlement provider has entered into any
21 viatical settlement contract that has not been approved pursuant to
22 the Viatical Settlements Act;

23 (f) The viatical settlement broker or viatical settlement
24 provider has failed to honor contractual obligations set out in a
25 viatical settlement contract;

1 (g) The licensee no longer meets the requirements for
2 initial licensure;

3 (h) The viatical settlement provider has assigned,
4 transferred, or pledged a viaticated policy to a person other
5 than a viatical settlement provider licensed in this state, a
6 viatical settlement purchaser, an accredited investor or qualified
7 institutional buyer as defined ~~respectively in Regulation D, Rule~~
8 ~~501, or in~~ Rule 144A of the federal Securities Act of 1933, as
9 the act existed on ~~September 1, 2001,~~ January 1, 2008, a financing
10 entity, a special purpose entity, or a related provider trust;

11 (i) The applicant or licensee or any officer, partner,
12 member, or key management personnel has violated any provision of
13 the Viatical Settlements Act or has otherwise engaged in bad faith
14 conduct with one or more viators; or

15 (j) The licensee has failed to respond to the department
16 within fifteen working days after receipt of an inquiry from the
17 department.

18 (2) The director may suspend or revoke a license pursuant
19 to subsection (1) of this section after notice and a hearing held
20 in accordance with the Administrative Procedure Act.

21 (3) If the director denies a license application or
22 refuses to renew a license pursuant to subsection (1) of this
23 section, he or she shall notify the applicant or licensee of the
24 reason for such denial or refusal of renewal. The applicant or
25 licensee has thirty days after receipt of such notification to

1 demand a hearing. The hearing shall be held within thirty days
2 after receipt of such demand by the director and shall be held in
3 accordance with the Administrative Procedure Act.

4 Sec. 9. Section 44-1105, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-1105 A person shall not use a viatical settlement
7 contract form or provide to a viator a disclosure statement
8 form in this state unless first filed with and approved by the
9 director. The director shall disapprove a viatical settlement
10 contract form or disclosure statement form if, in the director's
11 opinion, the contract or provisions contained therein fail to meet
12 the requirements of sections 44-1108, 44-1109, and 44-1111 and
13 subsection (2) of section 44-1112 or are unreasonable, contrary to
14 the interest of the public, or otherwise misleading or unfair to
15 the viator. At the director's discretion, the director may require
16 the submission of advertising material.

17 Sec. 10. Section 44-1106, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-1106 (1) Each viatical settlement provider shall file
20 with the director on or before March 1 of each year an annual
21 statement containing such information as the director may prescribe
22 by rule and regulation. Such information shall be limited to only
23 those transactions where the viator is a resident of this state.
24 Individual transaction data regarding the business of viatical
25 settlements or data that could compromise the privacy of personal,

1 financial, or health information of the viator or insured shall be
2 filed with the director on a confidential basis.

3 (2) Except as otherwise allowed or required by law, a
4 viatical settlement provider, viatical settlement broker, insurance
5 company, insurance producer, information bureau, rating agency or
6 company, or any other person with actual knowledge of an insured's
7 identity shall not disclose that identity as an insured or the
8 insured's financial or medical information to any other person
9 unless the disclosure:

10 (a) Is necessary to effect a viatical settlement between
11 the viator and a viatical settlement provider and the viator and
12 insured have provided prior written consent to the disclosure;

13 (b) Is provided in response to an investigation or
14 examination by the director or any other governmental officer or
15 agency or pursuant to the requirements of subsection (3) of section
16 44-1112;

17 (c) Is a term of or condition to the transfer of a policy
18 by one viatical settlement provider to another viatical settlement
19 provider;

20 (d) Is necessary to permit a financing entity, related
21 provider trust, or special purpose entity to finance the purchase
22 of policies by a viatical settlement provider and the viator and
23 insured have provided prior written consent to the disclosure;

24 (e) Is necessary to allow the viatical settlement
25 provider or viatical settlement broker or his or her authorized

1 representative to make contacts for the purpose of determining
2 health status; or

3 (f) Is required to purchase stop-loss or financial
4 guaranty coverage.

5 Sec. 11. Section 44-1107, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 44-1107 (1)(a) The director may conduct an examination
8 of a licensee under the Viatical Settlements Act as often as the
9 director, in his or her sole discretion, deems appropriate. In
10 scheduling and determining the nature, scope, and frequency of
11 examination, the director shall consider such matters as consumer
12 complaints, results of financial statement analyses and ratios,
13 changes in management or ownership, actuarial opinions, reports
14 of independent certified public accountants, and other relevant
15 criteria as determined by the director.

16 (b) For purposes of completing an examination of a
17 licensee under the act, the director may examine or investigate any
18 person or the business of any person, insofar as the examination or
19 investigation is, in the sole discretion of the director, necessary
20 or material to the examination of the licensee.

21 (c) In lieu of an examination under the act of any
22 foreign or alien licensee licensed in this state, the director may,
23 in his or her sole discretion, accept an examination report on the
24 licensee as prepared by the director for the licensee's state of
25 domicile or port-of-entry state.

1 (d) As far as is practical, the examination of a
 2 foreign or alien licensee shall be made in cooperation with
 3 the insurance regulatory officials of other states in which the
 4 licensee transacts business.

5 (2) (a) A person required to be licensed under the act
 6 shall for five years retain copies of all:

7 (i) Proposed, offered, or executed contracts, purchase
 8 agreements, underwriting documents, policy forms, and applications
 9 from the date of the proposal, offer, or execution of the
 10 contract, purchase agreement, underwriting document, policy form,
 11 or application, whichever is later;

12 (ii) Checks, drafts, or other evidence and documentation
 13 related to the payment, transfer, deposit, or release of funds from
 14 the date of the transaction; and

15 (iii) Other records and documents related to the
 16 requirements of the act.

17 (b) This section does not relieve a person of the
 18 obligation to produce documents under subdivision (a) of this
 19 subsection to the director after the retention period has expired
 20 if the person has retained the documents.

21 (c) Records required to be retained by this section must
 22 be legible and complete and may be retained in paper, photograph,
 23 microprocess, magnetic, mechanical, or electronic media or by any
 24 process that accurately reproduces or forms a durable medium for
 25 the reproduction of a record.

1 (3) (a) Upon determining that an examination should be
2 conducted, the director shall appoint one or more examiners
3 to perform the examination and instruct them as to the scope
4 of the examination. In conducting the examination, the examiner
5 shall observe those guidelines and procedures set forth in
6 the Examiners' Handbook adopted by the National Association of
7 Insurance Commissioners. The director may also employ such other
8 guidelines or procedures as he or she deems appropriate.

9 (b) Every licensee or person from whom information
10 is sought and its officers, directors, employees, and agents
11 shall provide to the examiner timely, convenient, and free
12 access at all reasonable hours at its offices to all books,
13 records, accounts, papers, documents, assets, and computer or
14 other recordings relating to the property, assets, business, and
15 affairs of the licensee being examined. The officers, directors,
16 employees, and agents of the licensee or person shall facilitate
17 the examination and aid in the examination so far as it is in
18 their power to do so. The refusal of a licensee, by its officers,
19 directors, employees, or agents, to submit to examination or to
20 comply with any reasonable written request of the director shall
21 be grounds for the suspension, refusal, or nonrenewal of any
22 license or authority held by the licensee to engage in the viatical
23 settlement business or other business subject to the director's
24 jurisdiction. Any proceedings for the suspension, revocation, or
25 refusal of any license or authority shall be conducted pursuant to

1 the Administrative Procedure Act.

2 (c) The director may issue subpoenas, administer oaths,
3 and examine under oath any person as to any matter pertinent
4 to the examination. Upon the failure or refusal of a person to
5 obey a subpoena, the director may petition a court of competent
6 jurisdiction, and upon proper showing, the court may enter an order
7 compelling the witness to appear and testify or produce documentary
8 evidence. Failure to obey the court order shall be punishable as
9 contempt of court. A person who is subpoenaed shall attend as a
10 witness at the place specified in the subpoena anywhere within the
11 state. He or she shall be entitled to the same fees and mileage,
12 if claimed, as a witness in the district court, with mileage
13 to be computed at the rate provided in section 81-1176, which
14 fees, mileage, and actual expense, if any, necessarily incurred in
15 securing the attendance of witnesses, and their testimony, shall be
16 itemized, charged against, and paid by the licensee being examined.

17 (d) When making an examination under the Viatical
18 Settlements Act, the director may retain attorneys, appraisers,
19 independent actuaries, independent certified public accountants,
20 or other professionals and specialists as examiners, the cost of
21 which will be borne by the licensee that is the subject of the
22 examination.

23 (e) Nothing contained in the act shall be construed
24 to limit the director's authority to terminate or suspend an
25 examination in order to pursue other legal or regulatory action

1 pursuant to the insurance laws of this state. Findings of fact and
2 conclusions of law made pursuant to any examination shall be prima
3 facie evidence in any legal or regulatory action.

4 (f) Nothing contained in the act shall be construed to
5 limit the director's authority to use, and, if appropriate, to make
6 public, any final or preliminary examination report, any examiner
7 or licensee workpapers or other documents, or any other information
8 discovered or developed during the course of any examination in the
9 furtherance of any legal or regulatory action which the director
10 may, in his or her sole discretion, deem appropriate.

11 (4)(a) Examination reports shall be comprised of only
12 facts appearing upon the books, records, or other documents of
13 the licensee or its agents or other persons examined, or as
14 ascertained from the testimony of its officers or agents or other
15 persons examined concerning its affairs, and such conclusions and
16 recommendations as the examiners find reasonably warranted from the
17 facts.

18 (b) No later than forty-five days following completion
19 of the examination, the examiner in charge shall file with the
20 director a verified written report of examination under oath. Upon
21 receipt of the verified report, the director shall transmit the
22 report to the licensee examined, together with a notice that shall
23 afford the licensee examined a reasonable opportunity of not more
24 than thirty days to make a written submission or rebuttal with
25 respect to any matters contained in the examination report.

1 (c) Within thirty days after the end of the period
2 allowed for the receipt of written submissions or rebuttals, the
3 director shall fully consider and review the report, together with
4 any written submissions or rebuttals and any relevant portions of
5 the examiner's workpapers, and shall:

6 (i) Adopt the examination report as submitted or with
7 modifications or corrections. If the examination report reveals
8 that the licensee is operating in violation of any law, rule,
9 regulation, or prior order of the director, the director may order
10 the licensee to take any action the director considers necessary
11 and appropriate to cure such violation; or

12 (ii) Reject the examination report with directions to
13 the examiner to reopen the examination for purposes of obtaining
14 additional data, documentation, or information and to resubmit a
15 report pursuant to subdivision (4) (b) of this section.

16 (d) Any licensee aggrieved by any action of the director
17 pursuant to subdivision (4) (c) of this section may, within ten
18 days after such action, make written request to the director for a
19 hearing. Upon receipt of the licensee's request for a hearing, the
20 director shall provide notice of the hearing no less than ten nor
21 more than thirty days after the date of the licensee's request. The
22 notice shall identify the subject of the hearing and the specific
23 issues.

24 (e) Any hearing on an examination report shall be held in
25 accordance with the Administrative Procedure Act.

1 (f) The examination report, with any modifications and
2 corrections thereof, shall be accepted by the director and filed
3 for public inspection immediately after the expiration of the
4 times specified in subdivision (4)(d) of this section in the
5 event that the licensee has not requested a hearing. Within
6 thirty days after the filing of the examination report for public
7 inspection, the licensee shall file affidavits executed by each of
8 its directors stating under oath that they have received a copy of
9 the examination report and related orders.

10 (5)(a) Names and individual identification data for all
11 viators shall be considered private and confidential information
12 and shall not be disclosed by the director unless required by law.

13 (b) Except as otherwise provided in the Viatical
14 Settlements Act, all examination reports, working papers, recorded
15 information, documents, and copies thereof produced by, obtained
16 by, or disclosed to the director or any other person in the
17 course of an examination made under the act, or in the course
18 of analysis or investigation by the director of the financial
19 condition or market conduct of a licensee, shall be confidential
20 by law and privileged, shall not be subject to disclosure pursuant
21 to sections 84-712 to 84-712.09, shall not be subject to subpoena,
22 and shall not be subject to discovery or admissible in evidence in
23 any private civil action. The director is authorized to use the
24 documents, materials, communications, or other information in the
25 furtherance of any regulatory or legal action brought as part of

1 the director's official duties.

2 (c) Documents, materials, communications, or other
3 information, including all working papers and copies thereof,
4 in the possession or control of the National Association of
5 Insurance Commissioners and its affiliates and subsidiaries shall
6 be confidential by law and privileged, shall not be subject to
7 subpoena, and shall not be subject to discovery or admissible in
8 evidence in any private civil action if they are:

9 (i) Created, produced, or obtained by or disclosed to the
10 National Association of Insurance Commissioners and its affiliates
11 and subsidiaries in the course of assisting an examination made
12 under the act or the law of another state or jurisdiction that
13 is substantially similar to the act or assisting the director or
14 the chief insurance regulatory official of another state in the
15 analysis or investigation of the financial condition or market
16 conduct of a licensee; or

17 (ii) Disclosed to the National Association of Insurance
18 Commissioners and its affiliates and subsidiaries under subdivision
19 (e) of this subsection by the director or the chief insurance
20 regulatory official of another state.

21 (d) Neither the director nor any person that received
22 the documents, materials, communications, or other information
23 while acting under the authority of the director, including the
24 National Association of Insurance Commissioners and its affiliates
25 and subsidiaries, shall be permitted to testify in any private

1 civil action concerning any confidential documents, materials,
2 communications, or other information subject to this subsection.

3 (e) In order to assist in the performance of his or her
4 duties, the director:

5 (i) May share documents, materials, communications,
6 or other information, including the confidential and privileged
7 documents, materials, communications, or other information subject
8 to this subsection, with other state, federal, foreign, and
9 international regulatory agencies, with the National Association
10 of Insurance Commissioners and its affiliates and subsidiaries,
11 and with state, federal, foreign, and international law
12 enforcement authorities, if the recipient agrees to maintain the
13 confidentiality and privileged status of the documents, materials,
14 communications, or other information;

15 (ii) May receive documents, materials, communications, or
16 other information, including otherwise confidential and privileged
17 documents, materials, communications, or other information,
18 from the National Association of Insurance Commissioners and
19 its affiliates and subsidiaries, and from regulatory and law
20 enforcement officials of other foreign or domestic jurisdictions,
21 and shall maintain as confidential or privileged any documents,
22 materials, communications, or other information received with
23 notice or the understanding that it is confidential or privileged
24 under the laws of the jurisdiction that is the source of the
25 documents, materials, communications, or other information; and

1 (iii) May enter into agreements governing sharing and use
2 of information consistent with this subsection.

3 (f) No waiver of any applicable privilege or claim of
4 confidentiality in the documents, materials, communications, or
5 other information shall occur as a result of disclosure to the
6 director under this section or as a result of sharing as authorized
7 in subdivision (d) of this subsection.

8 (g) A privilege established under the law of any state
9 or jurisdiction that is substantially similar to the privilege
10 established under this subsection shall be available and enforced
11 in any proceeding in, and in any court of, this state.

12 (h) Nothing contained in the act shall prevent or be
13 construed as prohibiting the director from disclosing the content
14 of an examination report, preliminary report or results, or
15 any matter relating thereto to the director or chief insurance
16 regulatory official of any other state or country, to any law
17 enforcement official of this state or any other state, to any
18 agency of the federal government at any time, or to the National
19 Association of Insurance Commissioners so long as the agency or
20 office receiving the examination report or matters relating thereto
21 agrees in writing to hold the examination report or matters
22 confidential and in a manner consistent with the act.

23 (6) (a) An examiner may not be appointed by the director
24 if the examiner, either directly or indirectly, has a conflict
25 of interest or is affiliated with the management of or owns a

1 pecuniary interest in any person subject to examination under the
2 Viatical Settlements Act. This subsection shall not be construed to
3 automatically preclude an examiner from being:

4 (i) A viator;

5 (ii) An insured in a viaticated insurance policy; or

6 (iii) A beneficiary in an insurance policy that is
7 proposed to be viaticated.

8 (b) Notwithstanding the requirements of this subsection,
9 the director may retain from time to time, on an individual basis,
10 qualified actuaries, certified public accountants, or other similar
11 individuals who are independently practicing their professions,
12 even though these persons may from time to time be similarly
13 employed or retained by persons subject to examination under the
14 act.

15 (7) The reasonable expenses of the examination of a
16 licensee conducted under the Viatical Settlements Act shall be
17 fixed and determined by the director who shall collect the same
18 from the licensee examined. The licensee shall reimburse the
19 amount thereof upon presentation of a statement by the director.
20 Reimbursement shall be limited to a reasonable allocation for the
21 salary of each examiner plus actual expenses. All money collected
22 by the director for examination of licensees shall be remitted in
23 accordance with section 44-116.

24 (8)(a) No cause of action shall arise nor shall
25 any liability be imposed against the director, the director's

1 authorized representatives, or any examiner appointed by the
2 director for any statements made or conduct performed in good faith
3 while carrying out the provisions of the Viatical Settlements Act.

4 (b) No cause of action shall arise nor shall any
5 liability be imposed against any person for the act of
6 communicating or delivering information or data to the director or
7 the director's authorized representative or an examiner pursuant to
8 an examination made under the act, if the act of communication or
9 delivery was performed in good faith and without fraudulent intent
10 or the intent to deceive. This subdivision does not abrogate or
11 modify in any way common-law or statutory privilege or immunity
12 heretofore enjoyed by any person identified in this subsection.

13 (c) A person identified in this subsection is entitled
14 to an award of attorney's fees and costs if he or she is the
15 prevailing party in a civil cause of action for libel, slander,
16 or any other relevant tort arising out of activities in carrying
17 out the provisions of the Viatical Settlements Act and the party
18 bringing the action was not substantially justified in doing
19 so. For purposes of this section, a proceeding is substantially
20 justified if it had a reasonable basis in law or fact at the time
21 that it was initiated.

22 (9) The director may investigate suspected fraudulent
23 viatical settlement acts and persons engaged in the business of
24 viatical settlements.

25 Sec. 12. Section 44-1108, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-1108 (1) With each application for a viatical
3 settlement, a viatical settlement provider or viatical settlement
4 broker shall provide the viator with at least the disclosures
5 required by this section no later than the time the application
6 for the viatical settlement contract is signed by all parties. The
7 disclosures shall be provided in a separate document that is signed
8 by the viator and the viatical settlement provider or viatical
9 settlement broker and shall provide the following information:

10 (a) Possible alternatives to viatical settlement
11 contracts, including any accelerated death benefits or policy loans
12 offered under the viator's life insurance policy;

13 (b) Some or all of the proceeds of the viatical
14 settlement may be taxable under federal income tax laws and
15 state franchise and income tax laws, and assistance should be
16 sought from a professional tax advisor;

17 (c) Proceeds from the viatical settlement could be
18 subject to the claims of creditors;

19 (d) Receipt of the proceeds from a viatical settlement
20 may adversely effect the viator's eligibility for medicaid or other
21 government benefits or entitlements, and advice should be obtained
22 from the appropriate government agencies;

23 (e) A viatical settlement broker represents exclusively
24 the viator, not the insurer or the viatical settlement provider,
25 and owes a fiduciary duty to the viator, including a duty to act

1 according to the viator's instructions and in the best interest of
2 the viator;

3 ~~(e)~~ (f) The viator has the right to rescind the viatical
4 settlement contract ~~for fifteen~~ before the earlier of sixty
5 calendar days after the date on which the viatical settlement
6 contract is executed by all parties or thirty calendar days after
7 ~~receipt of the viatical settlement proceeds by~~ have been paid
8 to the viator as provided in subsection (3) of section 44-1109.
9 Rescission, if exercised by the viator, is effective only if
10 both notice of the rescission is given and the viator repays
11 all proceeds and any premiums, loans, and loan interest paid on
12 account of the viatical settlement within the rescission period.

13 If the insured dies during the rescission period, the viatical
14 settlement contract shall be deemed to have been rescinded by the
15 viator or the viator's estate. If a viatical settlement contract is
16 rescinded, all viatical settlement proceeds and any premiums paid
17 by the viatical settlement provider or purchaser shall be repaid to
18 the viatical settlement provider or purchaser within sixty days of
19 such rescission;

20 (g) Funds will be sent to the viator within three
21 business days after the viatical settlement provider has received
22 the insurer or group administrator's written acknowledgment that
23 the ownership of the policy or interest in the certificate has been
24 transferred and the beneficiary has been designated;

25 ~~(f)~~ (h) Entering into a viatical settlement contract may

1 cause other rights or benefits, including conversion rights and
2 waiver of premium benefits, that may exist under the policy or
3 certificate to be forfeited by the viator, and assistance should be
4 sought from a financial advisor;

5 ~~(g)~~ (i) A brochure describing the process of viatical
6 settlements. The National Association of Insurance Commissioners'
7 form for the brochure shall be used unless one is developed by the
8 director; and

9 ~~(h)~~ The (j) Following the execution of a viatical
10 settlement contract, the insured may be contacted by either
11 the viatical settlement provider or broker or its authorized
12 representative for the purpose of determining the insured's health
13 status and to confirm the insured's residential or business street
14 address and telephone number, or as otherwise provided under this
15 act. This contact is limited to once every six months if the
16 insured has a life expectancy of more than one year, and no more
17 than once every three months if the insured has a life expectancy
18 of one year or less. ~~For purposes of this subdivision, authorized~~
19 ~~representative does not include a viatical settlement purchaser.~~
20 All such contacts shall be made only by a viatical settlement
21 provider licensed in the state in which the viator resided at the
22 time of the viatical settlement or by the authorized representative
23 of the viatical settlement provider.

24 The disclosure document shall contain the following
25 language: All medical, financial, or personal information solicited

1 or obtained by a viatical settlement provider or viatical
2 settlement broker about you, the insured, including your identity
3 or the identity of family members, a spouse, or a significant
4 other, may be disclosed as necessary to effect the viatical
5 settlement between the viator and the viatical settlement provider.
6 If you are asked to provide this information, you will be asked
7 to consent to the disclosure. The information may be provided to
8 someone who buys the policy or provides funds for the purchase. You
9 may be asked to renew your permission to share information every
10 two years.

11 (2) A viatical settlement provider shall provide the
12 viator with at least the following disclosures no later than the
13 date the viatical settlement contract is signed by all parties.
14 The disclosures shall be conspicuously displayed in the viatical
15 settlement contract or in a separate document signed by the viator
16 ~~and the viatical settlement provider or viatical settlement broker~~
17 and provide the following information:

18 (a) The affiliation, if any, between the viatical
19 settlement provider and the issuer of the insurance policy to be
20 viaticated;

21 (b) The name, business address, and telephone number of
22 the viatical settlement provider;

23 (c) ~~The amount and method of calculating the viatical~~
24 ~~settlement broker's compensation. Compensation includes anything~~
25 ~~of value paid or given to a viatical settlement broker for~~

1 ~~the placement of a policy;~~ Any affiliations or contractual
2 arrangements between the viatical settlement provider and the
3 viatical settlement purchaser;

4 (d) If an insurance policy to be viaticated has been
5 issued as a joint policy or involves family riders or any coverage
6 of a life other than the insured under the policy to be viaticated,
7 there is the possibility of a loss of coverage on the other lives
8 under the policy, and consultation with an insurance producer or
9 the insurer issuing the policy for advice on the proposed viatical
10 settlement is advised;

11 (e) The dollar amount of the current death benefit
12 payable to the viatical settlement provider under the policy or
13 certificate and, if known, the availability of any additional
14 guaranteed insurance benefits, the dollar amount of any accidental
15 death and dismemberment benefits under the policy or certificate,
16 and the ~~viatical settlement provider's~~ extent to which the viator's
17 interest in those benefits will be transferred as a result of the
18 viatical settlement contract; and

19 (f) ~~The~~ Whether the funds will be escrowed with an
20 independent third party during the transfer process, and if
21 so, provide the name, business address, and telephone number
22 of the independent third-party escrow agent. The viator or owner
23 may inspect or receive copies of the relevant escrow or trust
24 agreements or documents.

25 (3) A viatical settlement broker shall provide the viator

1 with at least the following disclosures no later than the date
 2 the viatical settlement contract is signed by all parties. The
 3 disclosures shall be conspicuously displayed in the viatical
 4 settlement contract or in a separate document signed by the
 5 viator and provide the following information:

6 (a) The name, business address, and telephone number of
 7 the viatical settlement broker;

8 (b) A full, complete, and accurate description of all
 9 offers, counter-offers, acceptances, and rejections relating to the
 10 proposed viatical settlement contract;

11 (c) A written disclosure of any affiliations or
 12 contractual arrangements between the viatical settlement broker and
 13 any person making an offer in connection with the proposed viatical
 14 settlement contracts;

15 (d) The amount and method of calculating the viatical
 16 settlement broker's compensation. Compensation includes anything
 17 of value paid or given to a viatical settlement broker for the
 18 placement of a policy; and

19 (e) If any portion of the viatical settlement broker's
 20 compensation is taken from a proposed viatical settlement offer,
 21 the viatical settlement broker shall disclose the total amount of
 22 the viatical settlement offer and the percentage of the viatical
 23 settlement offer comprised by the viatical settlement broker's
 24 compensation.

25 ~~(3)~~ (4) If the viatical settlement provider transfers

1 ownership or changes the beneficiary of the insurance policy, the
2 provider shall communicate in writing the change in ownership or
3 beneficiary to the insured within twenty days after the change.

4 Sec. 13. Before the initiation of a plan, transaction, or
5 series of transactions, a viatical settlement broker or viatical
6 settlement provider shall fully disclose to an insurer a plan,
7 transaction, or series of transactions to which the viatical
8 settlement broker or viatical settlement provider is a party, to
9 originate, renew, continue, or finance a life insurance policy with
10 the insurer for the purpose of engaging in the business of viatical
11 settlements at anytime prior to or during the first five years
12 after issuance of the policy.

13 Sec. 14. Section 44-1109, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-1109 (1)(a) A viatical settlement provider entering
16 into a viatical settlement contract shall first obtain:

17 (i) If the viator is the insured, a written statement
18 from a licensed attending physician that the viator is of sound
19 mind and under no constraint or undue influence to enter into a
20 viatical settlement contract; and

21 (ii) A document in which the insured consents, as
22 required in subsection (2) of section 44-1106, to the release
23 of his or her medical records to a viatical settlement provider, a
24 viatical settlement broker, and the insurance company that issued
25 the life insurance policy covering the life of the insured.

1 (b) Within twenty days after a viator executes documents
2 necessary to transfer any rights under an insurance policy, or
3 within twenty days after entering any agreement, option, promise,
4 or other form of understanding, expressed or implied, to viaticate
5 the policy, the viatical settlement provider shall give written
6 notice to the insurer that issued that insurance policy that the
7 policy has or will become a viaticated policy. The notice must be
8 accompanied by the documents required by subdivision (c) of this
9 subsection.

10 (c) The viatical settlement provider shall deliver a copy
11 of the medical release required under subdivision (a)(ii) of this
12 subsection, a copy of the viator's application for the viatical
13 settlement contract, the notice required under subdivision (b) of
14 this subsection, and a request for verification of coverage to the
15 insurer that issued the life insurance policy that is the subject
16 of the viatical transaction. The National Association of Insurance
17 Commissioners' form for verification of coverage shall be used
18 unless ~~standards for verification are~~ another form is developed and
19 approved by the director.

20 (d) The insurer shall respond to a request for
21 verification of coverage submitted on an approved form by a
22 viatical settlement provider or viatical settlement broker within
23 thirty calendar days after the date the request is received and
24 shall indicate whether, based on the medical evidence and documents
25 provided, the insurer intends to pursue an investigation at this

1 time regarding the validity of the insurance contract or possible
2 fraud. The insurer shall accept a request for verification of
3 coverage made on a National Association of Insurance Commissioners
4 form or any other form approved by the director. The insurer shall
5 accept an original, facsimile, or electronic copy of such request
6 and any accompanying authorization signed by the viator. Failure
7 by the insurer to meet its obligations under this subsection shall
8 be a violation of subsection (3) of section 44-1110 and section
9 44-1115.

10 (e) Prior to or at the time of execution of the viatical
11 settlement contract, the viatical settlement provider shall obtain
12 a witnessed document in which the viator consents to the viatical
13 settlement contract and represents that the viator has a full and
14 complete understanding of the viatical settlement contract, that
15 the viator has a full and complete understanding of the benefits
16 of the life insurance policy, that the viator acknowledges he or
17 she is entering into the viatical settlement contract freely and
18 voluntarily, and, for persons with a terminal or chronic illness or
19 condition, that the viator acknowledges the insured has a terminal
20 or chronic illness and the terminal or chronic illness or condition
21 was diagnosed after the life insurance policy was issued.

22 (f) If a viatical settlement broker performs any of the
23 activities listed in this subsection on behalf of the viatical
24 settlement provider, the provider is deemed to have fulfilled the
25 requirements of this section.

1 (2) All medical information solicited or obtained by any
2 licensee shall be subject to the applicable provisions of state law
3 relating to confidentiality of medical information.

4 (3) All viatical settlement contracts entered into in
5 this state shall provide the viator with an ~~unconditional~~ absolute
6 right to rescind the contract ~~for fifteen~~ before the earlier
7 of sixty calendar days after the date on which the viatical
8 settlement contract is executed by all parties or thirty calendar
9 days from the receipt of after the viatical settlement proceeds
10 have been sent to the viator as provided in subsection (5)
11 of this section. Rescission by the viator may be conditioned
12 on the viator both giving notice and repaying to the viatical
13 settlement provider within the rescission period all proceeds of
14 the settlement and any premiums, loans, and loan interest paid
15 by or on behalf of the viatical settlement provider in connection
16 with or as a consequence of the viatical settlement. If the
17 insured dies during the rescission period, the viatical settlement
18 contract shall be deemed to have been rescinded. If a viatical
19 settlement contract is rescinded, all viatical settlement proceeds
20 and any premiums, loans, and loan interest that have been paid
21 by the viatical settlement provider or purchaser shall be repaid
22 to the viatical settlement provider or purchaser within sixty
23 days of such rescission. In the event of any rescission, if
24 the viatical settlement provider has paid commissions or other
25 compensation to a viatical settlement broker in connection with the

1 rescinded transaction, the viatical settlement broker shall refund
2 all such commissions and compensation to the viatical settlement
3 provider within five business days following receipt of a written
4 demand from the viatical settlement provider, which demand shall
5 be accompanied by either the viator's notice of rescission if
6 rescinded at the election of the viator or notice of the death of
7 the insured if rescinded by reason of death of the insured within
8 the applicable rescission period.

9 (4) The viatical settlement provider shall instruct the
10 viator to send the executed documents required to effect the change
11 in ownership, assignment, or change in beneficiary directly to
12 the independent escrow agent. Within three business days after
13 the date the escrow agent receives the documents or after the
14 date the viatical settlement provider receives the documents if
15 the viator erroneously provides the documents directly to the
16 provider, the provider shall pay or transfer the proceeds of the
17 viatical settlement into an escrow or trust account maintained in
18 a state-chartered or federally chartered financial institution
19 whose deposits are insured by the Federal Deposit Insurance
20 Corporation. Upon payment of the settlement proceeds into the
21 escrow account, the escrow agent shall deliver the original change
22 in ownership, assignment, or change in beneficiary forms to the
23 viatical settlement provider or related provider trust or other
24 designated representative of the viatical settlement provider. Upon
25 the escrow agent's receipt of the acknowledgment of the properly

1 completed transfer of ownership, assignment, or designation of
2 beneficiary from the insurance company, the escrow agent shall pay
3 the settlement proceeds to the viator.

4 (5) Failure to tender consideration to the viator for
5 the viatical settlement contract within the time set forth in
6 the disclosure pursuant to subdivision (1)(g) of section 44-1108
7 renders the viatical settlement contract voidable by the viator for
8 lack of consideration until the time consideration is tendered to
9 and accepted by the viator. Funds shall be deemed as sent by a
10 viatical settlement provider to a viator as of the date that the
11 escrow agent either releases funds for wire transfer to the viator
12 or sends a check for delivery to the viator by the United States
13 Postal Service or other nationally recognized delivery service.

14 (6) Contacts with the insured for the purpose of
15 determining the health status of the insured by the viatical
16 settlement provider or viatical settlement broker after the
17 viatical settlement has occurred shall only be made by the viatical
18 settlement provider or viatical settlement broker licensed in this
19 state or its authorized representatives and shall be limited to
20 once every six months for insureds with a life expectancy of
21 more than one year and to no more than once every three months
22 for insureds with a life expectancy of one year or less. The
23 provider or broker shall explain the procedure for these contacts
24 at the time the viatical settlement contract is entered into. The
25 limitations set forth in this subsection shall not apply to any

1 contacts with an insured for reasons other than determining the
2 insured's health status. Viatical settlement providers and viatical
3 settlement brokers shall be responsible for the actions of their
4 authorized representatives.

5 Sec. 15. Section 44-1110, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 44-1110 (1) It is a violation of the Viatical Settlements
8 Act for any person to enter into a viatical settlement contract
9 at any time prior to the application or issuance of a policy
10 which is the subject of a viatical settlement contract or within
11 a ~~two-year~~ five-year period commencing on the date of issuance of
12 the insurance policy or certificate unless the viator certifies to
13 the viatical settlement provider that one or more of the following
14 conditions have been met within the ~~two-year~~ five-year period:

15 ~~(1)~~ (a) The policy was issued upon the viator's exercise
16 of conversion rights arising out of a group or individual policy
17 if the total of the time covered under the conversion policy, plus
18 the time covered under the group or individual policy, is at least
19 ~~twenty-four~~ sixty months. The time covered under the group policy
20 shall be calculated without regard to any change in insurance
21 carriers if the coverage has been continuous and under the same
22 group sponsorship;

23 ~~(2)~~ The viator is a charitable organization exempt from
24 taxation under 26 U.S.C. 501(c)(3), as such section existed on
25 September 1, 2001;

1 ~~(3) The viator is not a natural person, such as the owner~~
2 ~~is a corporation, limited liability company, or partnership, and~~

3 ~~(4) (b) The viator submits independent evidence to the~~
4 ~~viatical settlement provider that one or more of the following~~
5 ~~conditions have been met within the ~~two-year~~ five-year period:~~

6 ~~(a) (i) The viator or insured is terminally or~~
7 ~~chronically ill;~~

8 ~~(b) (ii) The viator's spouse died;~~

9 ~~(c) (iii) The viator divorced his or her spouse;~~

10 ~~(d) (iv) The viator retired from full-time employment;~~

11 ~~(e) (v) The viator became physically or mentally disabled~~
12 ~~and a physician determined that the disability prevented the viator~~
13 ~~from maintaining full-time employment; or~~

14 ~~(f) The viator was the insured's employer at the time the~~
15 ~~policy or certificate was issued and the employment relationship~~
16 ~~terminated;~~

17 ~~(g) (vi) A final order, judgment, or decree was entered~~
18 ~~by a court of competent jurisdiction, on the application of~~
19 ~~a creditor of the viator, adjudicating the viator bankrupt or~~
20 ~~insolvent, or approving a petition seeking reorganization of the~~
21 ~~viator or appointing a receiver, trustee, or liquidator for all or~~
22 ~~a substantial part of the viator's assets; and~~

23 ~~(h) The viator experienced a significant decrease~~
24 ~~in income that was unexpected and that impaired the viator's~~
25 ~~reasonable ability to pay the policy premium; or~~

1 ~~(i) The viator or insured disposed of his or her~~
2 ~~ownership interests in a closely held corporation.~~

3 (c) The viator enters into a viatical settlement contract
4 more than two years after the date of issuance of a policy and,
5 with respect to the policy, at all times prior to the date that is
6 two years after policy issuance, the following conditions are met:

7 (i) Policy premiums have been funded exclusively with
8 unencumbered assets, including an interest in the life insurance
9 policy being financed only to the extent of its net cash surrender
10 value, provided by, or fully recourse liability incurred by, the
11 insured or a person described in subdivision (15)(c)(v) of section
12 44-1102;

13 (ii) There is no agreement or understanding with any
14 other person to guarantee any such liability or to purchase or
15 stand ready to purchase the policy, including through an assumption
16 or forgiveness of the loan; and

17 (iii) Neither the insured nor the policy has been
18 evaluated for settlement.

19 (2) Copies of the independent evidence described in
20 subdivision ~~(4)~~ (1)(b) of this section and documents required by
21 subsection (1) of section 44-1109 shall be submitted to the insurer
22 when the viatical settlement provider or other party entering into
23 a viatical settlement contract with a viator submits a request
24 to the insurer for verification of coverage. The copies shall be
25 accompanied by a letter of attestation from the viatical settlement

1 provider that the copies are true and correct copies of the
2 documents received by the viatical settlement provider.

3 (3) If the viatical settlement provider submits to the
4 insurer a copy of the owner's or insured's certification and the
5 independent evidence described in subdivision ~~(4)~~ (1)(b) of this
6 section when the provider submits a request to the insurer to
7 effect the transfer of the policy or certificate to the viatical
8 settlement provider, the copy shall be deemed to conclusively
9 establish that the viatical settlement contract satisfies the
10 requirements of this section and the insurer shall timely respond
11 to the request.

12 (4) No insurer may, as a condition of responding to a
13 request for verification of coverage or effecting the transfer
14 of a policy pursuant to a viatical settlement contract, require
15 that the viator, insured, viatical settlement provider, or viatical
16 settlement broker sign any forms, disclosures, consent, or waiver
17 form that has not been expressly approved by the director for use
18 in connection with viatical settlement contracts in this state.

19 (5) Upon receipt of a properly completed request for
20 change of ownership or beneficiary of a policy, the insurer
21 shall respond in writing within thirty calendar days with written
22 acknowledgment confirming that the change has been effected
23 or specifying the reasons why the requested change cannot be
24 processed. The insurer shall not unreasonably delay effecting
25 change of ownership or beneficiary and shall not otherwise seek to

1 interfere with any viatical settlement contract lawfully entered
2 into in this state.

3 Sec. 16. (1) With respect to any viatical settlement
4 contract or insurance policy, no viatical settlement broker shall
5 knowingly solicit an offer from, effectuate a viatical settlement
6 with, or make a sale to any viatical settlement provider, viatical
7 settlement purchaser, financing entity, or related provider trust
8 that is controlling, controlled by, or under common control with
9 such viatical settlement broker.

10 (2) With respect to any viatical settlement contract or
11 insurance policy, no viatical settlement provider shall knowingly
12 enter into a viatical settlement contract with a viator if,
13 in connection with such viatical settlement contract, anything
14 of value will be paid to a viatical settlement broker that is
15 controlling, controlled by, or under common control with such
16 viatical settlement provider or the viatical settlement purchaser,
17 financing entity, or related provider trust that is involved in
18 such viatical settlement contract.

19 (3) A violation of subsection (1) or (2) of this section
20 shall be a fraudulent viatical settlement act.

21 (4) No viatical settlement provider shall enter into
22 a viatical settlement contract unless the viatical settlement
23 promotional, advertising, and marketing materials as may be
24 prescribed by rule and regulation have been filed with the
25 director. In no event shall any marketing materials expressly

1 reference that the insurance is free for any period of time. The
2 inclusion of any reference in the marketing materials that would
3 cause a viator to reasonably believe that the insurance is free for
4 any period of time shall be considered a violation of the Viatical
5 Settlements Act.

6 (5) No life insurance producer, insurance company,
7 viatical settlement broker, or viatical settlement provider
8 shall make any statement or representation to the applicant or
9 policyholder in connection with the sale or financing of a life
10 insurance policy to the effect that the insurance is free or
11 without cost to the policyholder for any period of time unless
12 provided in the policy.

13 Sec. 17. Section 44-1111, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-1111 (1) The purpose of this section is to provide
16 prospective viators with clear and unambiguous statements in
17 the advertisement of viatical settlements and to assure the
18 clear, truthful, and adequate disclosure of the benefits, risks,
19 limitations, and exclusions of any viatical settlement contract.
20 This purpose is intended to be accomplished by the establishment of
21 guidelines and standards of permissible and impermissible conduct
22 in the advertising of viatical settlements or related products or
23 services to assure that product descriptions are presented in a
24 manner that prevents unfair, deceptive, or misleading advertising
25 and is conducive to accurate presentation and description of

1 viatical settlements or related products or services through the
2 advertising media and material used by licensees.

3 (2) This section applies to any advertising of viatical
4 settlement contracts or related products or services intended for
5 dissemination in this state, including Internet advertising viewed
6 by persons located in this state. If disclosure requirements are
7 established pursuant to federal regulation, this section shall be
8 interpreted so as to minimize or eliminate conflict with federal
9 regulation whenever possible.

10 (3) Every licensee shall establish and at all times
11 maintain a system of control over the content, form, and method
12 of dissemination of all advertisements of its contracts, products,
13 and services. All advertisements, regardless of by whom written,
14 created, designed, or presented, shall be the responsibility of
15 the licensee or licensees, as well as the individual who created
16 or presented the advertisement. A system of control shall include
17 regular routine notification, at least once a year, to agents and
18 others authorized by the licensee who disseminate advertisements of
19 the requirements and procedures for approval prior to the use of
20 any advertisement not furnished by the licensee.

21 (4) Advertisements shall be truthful and not misleading
22 in fact or by implication. The form and content of an advertisement
23 of a viatical settlement contract shall be sufficiently complete
24 and clear so as to avoid deception. It shall not have the capacity
25 or tendency to mislead or deceive. Whether an advertisement has the

1 capacity or tendency to mislead or deceive shall be determined by
2 the director from the overall impression that the advertisement may
3 be reasonably expected to create upon a person of average education
4 or intelligence within the segment of the public to which it is
5 directed.

6 (5) (a) The information required to be disclosed under
7 this section shall not be minimized, rendered obscure, or presented
8 in an ambiguous fashion or intermingled with the text of the
9 advertisement so as to be confusing or misleading.

10 (b) An advertisement shall not omit material information
11 or use words, phrases, statements, references, or illustrations
12 if the omission or use has the capacity, tendency, or effect of
13 misleading or deceiving viators as to the nature or extent of any
14 benefit, loss covered, premium payable, or state or federal tax
15 consequence. The fact that the viatical settlement contract offered
16 is made available for inspection prior to consummation of the sale,
17 or an offer is made to refund the payment if the viator is not
18 satisfied, or that the viatical settlement contract includes a free
19 look period that satisfies or exceeds legal requirements, does not
20 remedy misleading statements.

21 (c) An advertisement shall not use the name or title of
22 a life insurance company or a life insurance policy unless the
23 advertisement has been approved by the insurer.

24 (d) An advertisement shall not state or imply that
25 interest charged on an accelerated death benefit or a policy loan

1 is unfair, inequitable, or in any manner an incorrect or improper
2 practice.

3 (e) The words free, no cost, without cost, no additional
4 cost, or at no extra cost or words of similar import shall not
5 be used with respect to any benefit or service unless true. An
6 advertisement may specify the charge for a benefit or a service or
7 may state that a charge is included in the payment or use other
8 appropriate language.

9 (f) (i) Any testimonial, appraisal, analysis, or
10 endorsement used in an advertisement must be genuine, represent
11 the current opinion of the author, be applicable to the viatical
12 settlement contract, product, or service advertised, and be
13 accurately reproduced with sufficient completeness to avoid
14 misleading or deceiving prospective viators as to the nature or
15 scope of the testimonial, appraisal, analysis, or endorsement. In
16 using a testimonial, an appraisal, an analysis, or an endorsement,
17 the licensee makes as its own all the statements contained therein,
18 and the statements are subject to all the provisions of this
19 section.

20 (ii) If the individual making a testimonial, an
21 appraisal, an analysis, or an endorsement has a financial interest
22 in the ~~viatical settlement provider~~ or party making use of the
23 testimonial, appraisal, analysis, or endorsement either directly
24 or through a related entity as a stockholder, director, officer,
25 employee, or otherwise, or receives any benefit directly or

1 indirectly other than required union scale wages, that fact shall
2 be prominently disclosed in the advertisement.

3 (iii) An advertisement shall not state or imply that a
4 viatical settlement contract benefit or service has been approved
5 or endorsed by a group of individuals or any society, association,
6 or other organization unless that is the fact and unless any
7 relationship between an organization and the viatical settlement
8 provider is disclosed. If the entity making the approval or
9 endorsement is owned, controlled, or managed by the viatical
10 settlement provider, or receives any payment or other consideration
11 from the viatical settlement provider for making an approval or
12 endorsement, that fact shall be disclosed in the advertisement.

13 (iv) When a testimonial, an appraisal, an analysis, or an
14 endorsement refers to benefits received under a viatical settlement
15 contract, all pertinent information shall be retained for a period
16 of five years after its use.

17 (v) An advertisement shall not contain statistical
18 information unless it accurately reflects recent and relevant
19 facts. The source of all statistics used in an advertisement shall
20 be identified.

21 (vi) An advertisement shall not disparage insurers,
22 viatical settlement providers, viatical settlement brokers,
23 viatical settlement investment agents, insurance producers,
24 policies, services, or methods of marketing.

25 (vii) The name of the viatical settlement licensee shall

1 be clearly identified in all advertisements about the licensee or
2 its viatical settlement contract, products, or services, and if any
3 specific viatical settlement contract is advertised, the viatical
4 settlement contract shall be identified either by form number or
5 some other appropriate description. If an application is part of
6 the advertisement, the name of the viatical settlement provider
7 shall be shown on the application.

8 (viii) An advertisement shall not use a trade name, group
9 designation, name of the parent company of a licensee, name of a
10 particular division of the licensee, service mark, slogan, symbol,
11 or other device or reference without disclosing the name of the
12 licensee if the advertisement would have the capacity or tendency
13 to mislead or deceive as to the true identity of the licensee, or
14 to create the impression that a company other than the licensee
15 would have any responsibility for the financial obligation under a
16 viatical settlement contract.

17 (ix) An advertisement shall not use any combination
18 of words, symbols, or physical materials that by their content,
19 phraseology, shape, color, or other characteristics are so similar
20 to a combination of words, symbols, or physical materials used by
21 a government program or agency or otherwise appear to be of such a
22 nature that they tend to mislead prospective viators into believing
23 that the solicitation is in some manner connected with a government
24 program or agency.

25 (x) An advertisement may state that a viatical settlement

1 provider is licensed in the state where the advertisement appears
2 if it does not exaggerate that fact or suggest or imply that
3 competing viatical settlement providers may not be licensed. The
4 advertisement may ask the audience to consult the licensee's web
5 site or contact the department to find out if the state requires
6 licensing and, if so, whether the viatical settlement provider is
7 licensed.

8 (xi) An advertisement shall not create the impression
9 that the viatical settlement provider, its financial condition or
10 status, the payment of its claims, or the merits, desirability, or
11 advisability of its viatical settlement contracts are recommended
12 or endorsed by any government entity.

13 (xii) The name of the licensee shall be stated in all of
14 its advertisements. An advertisement shall not use a trade name,
15 any group designation, the name of any affiliate or controlling
16 entity of the licensee, a service mark, a slogan, a symbol, or
17 any other device in a manner that would have the capacity or
18 tendency to mislead or deceive as to the true identity of the
19 actual licensee or create the false impression that an affiliate or
20 controlling entity would have any responsibility for the financial
21 obligation of the licensee.

22 (xiii) An advertisement shall not disclose or indirectly
23 create the impression that any division or agency of the state or
24 of the United States Government endorses, approves, or favors:

25 (A) Any licensee or its business practices or methods of

1 operation;

2 (B) The merits, desirability, or advisability of any
3 viatical settlement contract or viatical settlement program;

4 (C) Any viatical settlement contract or viatical
5 settlement program; or

6 (D) Any life insurance policy or life insurance company.

7 (xiv) If the advertiser emphasizes the speed with which
8 the viatication will occur, the advertising must disclose the
9 average timeframe from completed application to the date of offer
10 and from acceptance of the offer to receipt of the funds by the
11 viator.

12 (xv) If the advertising emphasizes the dollar amounts
13 available to viators, the advertising shall disclose the average
14 purchase price as a percent of face value obtained by viators
15 contracting with the licensee during the past six months.

16 Sec. 18. Section 44-1112, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-1112 (1)(a) A person shall not commit a fraudulent
19 viatical settlement act.

20 (b) A person shall not knowingly or intentionally
21 interfere with the enforcement of the provisions of the Viatical
22 Settlements Act or investigations of suspected or actual violations
23 of the act.

24 (c) A person in the business of viatical settlements
25 shall not knowingly or intentionally permit any person convicted of

1 a felony involving dishonesty or breach of trust to participate in
2 the business of viatical settlements.

3 (2)(a) Viatical settlement contracts and applications
4 for viatical settlements, regardless of the form of transmission,
5 shall contain the following statement or a substantially similar
6 statement: Any person who knowingly presents false information in
7 an application for insurance or viatical settlement contract is
8 guilty of a crime and may be subject to fines and confinement in
9 prison.

10 (b) The lack of a statement as required in this
11 subsection does not constitute a defense in any prosecution for a
12 fraudulent viatical settlement act.

13 (3)(a) Any person engaged in the business of viatical
14 settlements having knowledge or a reasonable ~~belief~~ suspicion that
15 a fraudulent viatical settlement act is being, will be, or has been
16 committed shall provide to the director the information required
17 by, and in a manner prescribed by, the director.

18 (b) Any other person having knowledge or a reasonable
19 belief that a fraudulent viatical settlement act is being, will be,
20 or has been committed may provide to the director the information
21 required by, and in a manner prescribed by, the director.

22 (4)(a) No civil liability shall be imposed on and no
23 cause of action shall arise from a person's furnishing information
24 concerning suspected, anticipated, or completed fraudulent viatical
25 settlement acts, if the information is provided to or received

1 from:

2 (i) The director or the director's employees, agents, or
3 representatives;

4 (ii) The Director of Banking and Finance or his or her
5 employees, agents, or representatives;

6 (iii) Federal, state, or local law enforcement officials
7 or their employees, agents, or representatives;

8 (iv) The National Association of Insurance Commissioners,
9 the National Association of Securities Dealers, or the North
10 American Securities Administrators Association, employees, agents,
11 or representatives of any such association, or any other regulatory
12 body overseeing life insurance, viatical settlements, securities,
13 or investment fraud; or

14 (v) The life insurer that issued the life insurance
15 policy covering the life of the insured.

16 (b) This subsection does not apply to statements made
17 with actual malice, fraudulent intent, or bad faith. In an action
18 brought against a person for filing a report or furnishing other
19 information concerning a fraudulent viatical settlement act, the
20 party bringing the action shall plead specifically any allegation
21 that this subsection does not apply because the person filing the
22 report or furnishing the information did so with actual malice,
23 fraudulent intent, or bad faith.

24 (c) A person furnishing information as identified in
25 this subsection shall be entitled to an award of attorney's fees

1 and costs if he or she is the prevailing party in a civil
2 cause of action for libel, slander, or any other relevant tort
3 arising out of activities in carrying out the provisions of the
4 Viatical Settlements Act and the party bringing the action was
5 not substantially justified in doing so. For purposes of this
6 section, a proceeding is substantially justified if it had a
7 reasonable basis in law or fact at the time it was initiated.
8 An award granted under this subdivision shall not apply to any
9 person furnishing information concerning his or her own fraudulent
10 viatical settlement acts.

11 (d) This section does not abrogate or modify common-law
12 or statutory privileges or immunities enjoyed by a person described
13 in this subsection.

14 (5) (a) The documents and evidence provided pursuant to
15 subsection (4) of this section or obtained by the director in an
16 investigation of suspected or actual fraudulent viatical settlement
17 acts shall be privileged and confidential and shall not be a public
18 record and shall not be subject to discovery or subpoena in a civil
19 or criminal action.

20 (b) This subsection does not prohibit release by the
21 director of documents and evidence obtained in an investigation of
22 suspected or actual fraudulent viatical settlement acts:

23 (i) In administrative or judicial proceedings to enforce
24 laws administered by the director;

25 (ii) To federal, state, or local law enforcement or

1 regulatory agencies, to an organization established for the purpose
2 of detecting and preventing fraudulent viatical settlement acts, or
3 to the National Association of Insurance Commissioners; or

4 (iii) At the discretion of the director, to a person
5 in the business of viatical settlements that is aggrieved by a
6 fraudulent viatical settlement act.

7 (c) Release of documents and evidence under this
8 subsection does not abrogate or modify the privilege granted in
9 this subsection.

10 (6) The Viatical Settlements Act shall not:

11 (a) Preempt the authority or relieve the duty of other
12 law enforcement or regulatory agencies to investigate, examine, and
13 prosecute suspected violations of law;

14 (b) Prevent or prohibit a person from disclosing
15 voluntarily information concerning viatical settlement fraud to a
16 law enforcement or regulatory agency other than the department; or

17 (c) Limit the powers granted elsewhere by the laws
18 of this state to the director or an insurance fraud unit to
19 investigate and examine possible violations of law and to take
20 appropriate action against wrongdoers.

21 ~~(7)~~ (7) (a) Viatical settlement providers and viatical
22 settlement brokers shall have in place antifraud initiatives
23 reasonably calculated to detect, prosecute, and prevent fraudulent
24 viatical settlement acts. At the discretion of the director,
25 the director may order, or a licensee may request and the

1 director may grant, such modifications of the following required
2 initiatives as necessary to ensure an effective antifraud program.
3 The modifications may be more or less restrictive than the required
4 initiatives so long as the modifications may reasonably be expected
5 to accomplish the purpose of this section.

6 (b) Antifraud initiatives shall include:

7 ~~(a)~~ (i) Fraud investigators, who may be viatical
8 settlement provider or viatical settlement broker employees or
9 independent contractors; and

10 ~~(b)~~ (ii) An antifraud plan submitted to the director. The
11 antifraud plan shall include, but not be limited to:

12 ~~(i)~~ (A) A description of the procedures for detecting
13 and investigating possible fraudulent viatical settlement acts and
14 procedures for resolving material inconsistencies between medical
15 records and insurance applications;

16 ~~(ii)~~ (B) A description of the procedures for reporting
17 possible fraudulent viatical settlement acts to the director;

18 ~~(iii)~~ (C) A description of the plan for antifraud
19 education and training of underwriters and other personnel; and

20 ~~(iv)~~ (D) A description or chart outlining the
21 organizational arrangement of the antifraud personnel who are
22 responsible for the investigation and reporting of possible
23 fraudulent viatical settlement acts and investigating unresolved
24 material inconsistencies between medical records and insurance
25 applications.

1 (c) Antifraud plans submitted to the director shall be
2 privileged and confidential, shall not be a public record, and
3 shall not be subject to discovery or subpoena in a civil or
4 criminal action.

5 Sec. 19. Section 44-1113, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 44-1113 (1) In addition to the penalties and other
8 enforcement provisions of the Viatical Settlements Act, if any
9 person violates the act or any rule or regulation implementing the
10 act, the director may seek an injunction in a court of competent
11 jurisdiction and may apply for temporary and permanent orders that
12 the director determines are necessary to restrain the person from
13 committing the violation.

14 (2) Any person damaged by the acts of a person in
15 violation of the act may bring a civil action against the person
16 committing the violation in a court of competent jurisdiction.

17 (3) The director may issue, in accordance with the
18 Administrative Procedure Act, a cease and desist order upon a
19 person that violates any provision of the Viatical Settlements Act,
20 any rule, regulation, or order adopted or issued by the director,
21 or any written agreement entered into between such person and the
22 director.

23 (4) When the director finds that an activity in violation
24 of the act presents an immediate danger to the public that requires
25 an immediate final order, the director may issue an emergency cease

1 and desist order reciting with particularity the facts underlying
2 the findings. The emergency cease and desist order is effective
3 immediately upon service of a copy of the order on the respondent
4 and remains effective for ninety days. If the director begins
5 nonemergency cease and desist proceedings, the emergency cease
6 and desist order remains effective, absent an order by a court
7 of competent jurisdiction pursuant to the Administrative Procedure
8 Act.

9 (5) In addition to the penalties and other enforcement
10 provisions of the Viatical Settlements Act, any person who violates
11 the act is subject to civil penalties of up to one thousand dollars
12 per violation. Imposition of civil penalties shall be pursuant to
13 an order of the director issued under the Administrative Procedure
14 Act. The director's order may require a person found to be in
15 violation of the Viatical Settlements Act to make restitution to
16 persons aggrieved by violations of the act.

17 (6) A person who is found by a court of competent
18 jurisdiction, pursuant to an action initiated by the director, to
19 have committed a fraudulent viatical settlement act, is subject
20 to a civil penalty not to exceed five thousand dollars for the
21 first violation, ten thousand dollars for the second violation, and
22 fifteen thousand dollars for each subsequent violation.

23 (7) A person convicted of a violation of the act by a
24 court of competent jurisdiction shall be guilty of a Class III
25 misdemeanor. A person convicted of a violation of the act shall be

1 ordered to pay restitution to persons aggrieved by the violation.
2 Restitution shall be ordered in addition to a fine or imprisonment,
3 but not in lieu of a fine or imprisonment. A prosecution under this
4 subsection shall be in lieu of an action under subsection (6) of
5 this section.

6 (8) Except for a fraudulent viatical settlement act
7 committed by a viator, the enforcement provisions and penalties of
8 this section shall not apply to a viator.

9 Sec. 20. Section 44-1114, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 44-1114 The director shall have the authority to:

12 (1) Adopt and promulgate rules and regulations to carry
13 out the Viatical Settlements Act;

14 (2) Establish standards for evaluating reasonableness of
15 payments under viatical settlement contracts for persons with a
16 terminal or chronic illness or condition. This authority includes,
17 but is not limited to, regulation of discount rates used to
18 determine the amount paid in exchange for assignment, transfer,
19 sale, devise, or bequest of a benefit under a life insurance policy
20 insuring the life of a person who is chronically ill or terminally
21 ill;

22 (3) Establish appropriate licensing requirements, fees,
23 and standards for continued licensure for viatical settlement
24 providers and brokers;

25 (4) Require a bond or other mechanism for financial

1 accountability for viatical settlement providers and brokers; and

2 (5) Adopt rules and regulations governing the
3 relationship and responsibilities of insurers, viatical settlement
4 providers, and viatical settlement brokers during the viatication
5 of a life insurance policy or certificate.

6 Sec. 21. Section 44-1115, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-1115 A violation of the Viatical Settlements Act,
9 including the commission of a fraudulent viatical settlement act,
10 shall be considered an unfair trade practice under the Unfair
11 Insurance Trade Practices Act subject to the penalties contained in
12 the act.

13 Sec. 22. Section 44-1521, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-1521 Sections 44-1521 to 44-1535 and section 23 of
16 this act shall be known and may be cited as the Unfair Insurance
17 Trade Practices Act.

18 Sec. 23. The Director of Insurance may adopt and
19 promulgate rules and regulations to protect members of the
20 United States Armed Forces from dishonest and predatory insurance
21 sales practices by declaring certain identified practices to be
22 false, misleading, deceptive, or unfair as required by the federal
23 Military Personnel Financial Services Protection Act, Public Law
24 109-290, as such law existed on the operative date of this section.

25 Sec. 24. Section 44-32,106, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-32,106 Health maintenance organization producer shall
3 mean a person licensed under subdivision (1)(b) of section 44-4054
4 who solicits, negotiates, effects, procures, delivers, renews, or
5 continues a policy or contract for health maintenance organization
6 membership, or who takes or transmits a membership fee or premium
7 for such a policy or contract, other than for himself or herself,
8 or who advertises or otherwise holds himself or herself out to the
9 public as such.

10 Sec. 25. Section 44-3901, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-3901 The purpose of sections 44-3901 to 44-3908 is
13 to establish requirements for continuing education of insurance
14 ~~agents, brokers,~~ producers and consultants who are licensed in
15 order to maintain and improve the quality of insurance services
16 provided to the public.

17 Sec. 26. Section 44-3902, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-3902 For purposes of sections 44-3901 to 44-3908,
20 unless the context otherwise requires:

21 (1) Licensee shall mean a natural person who is licensed
22 by the department as a resident ~~agent, broker,~~ insurance producer
23 or consultant;

24 (2) Director shall mean the Director of Insurance;

25 (3) Department shall mean the Department of Insurance;

1 and

2 (4) Two-year period shall mean the period commencing on
3 the date of licensing and ending on the date of expiration of the
4 licensee's first license effective for not less than two years and
5 each succeeding twenty-four-month period.

6 Sec. 27. Section 44-3904, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-3904 (1) (a) (i) Licensees qualified to solicit property
9 and casualty insurance shall be required to complete ~~twenty-four~~
10 ~~hours of approved continuing education activities in each two-year~~
11 ~~period commencing before January 1, 2000,~~ and twenty-one hours
12 of approved continuing education activities in each two-year
13 period commencing ~~on or after~~ before January 1, ~~2000,~~ 2010.
14 Licensees qualified to solicit life, accident and health or
15 sickness, property, casualty, or personal lines property and
16 casualty insurance shall be required to complete six hours
17 of approved continuing education activities for each line of
18 insurance, including each miscellaneous line, in which he or she
19 is licensed in each two-year period commencing before January 1,
20 2010. Licensees qualified to solicit life, accident and health
21 or sickness, property, casualty, or personal lines property and
22 casualty insurance shall be required to complete twenty-one hours
23 of approved continuing education activities in each two-year period
24 commencing on or after January 1, 2010.

25 ~~(ii) Licensees qualified to solicit assessment~~

1 ~~association insurance shall be required to complete twelve hours of~~
2 ~~approved continuing education activities in each two-year period.~~

3 ~~(iii)~~ (ii) Licensees qualified to solicit only crop
4 insurance ~~or only fidelity and surety insurance~~ shall be required
5 to complete three hours of approved continuing education activities
6 in each two-year period.

7 ~~(iv)~~ (iii) Licensees qualified to solicit any lines of
8 insurance other than those described in subdivisions (i) ~~through~~
9 ~~(iii)~~ and (ii) of subdivision (a) of this subsection shall be
10 required to complete six hours of approved continuing education
11 activities in each two-year period for each line of insurance,
12 including each miscellaneous line, in which he or she is licensed.
13 Licensees qualified to solicit variable life and variable annuity
14 products shall not be required to complete additional continuing
15 education activities because the licensee is qualified to solicit
16 variable life and variable annuity products.

17 (b) Licensees who are ~~neither agents nor brokers~~ not
18 insurance producers shall be required to complete ~~twenty-four~~
19 ~~hours of continuing education activities in each two-year period~~
20 ~~commencing before January 1, 2000,~~ and twenty-one hours of approved
21 continuing education activities in each two-year period commencing
22 on or after January 1, 2000.

23 (c) In each two-year period, every licensee shall furnish
24 evidence to the director that he or she has satisfactorily
25 completed the hours of approved continuing education activities

1 required under this subsection for each line of insurance in
2 which he or she is licensed as a resident agent or broker,
3 insurance producer, except that no licensee shall be required to
4 complete more than twenty-four cumulative hours ~~required under~~
5 ~~this subsection in any two-year period commencing before January~~
6 ~~1, 2000,~~ and ~~twenty-one~~ cumulative hours required under this
7 subsection in any two-year period commencing on or after January 1,
8 2000.

9 (d) A licensee shall not repeat a continuing education
10 activity for credit within a two-year period.

11 (2) In each two-year period, ~~commencing before January 1,~~
12 ~~2000,~~ licensees required to complete approved continuing education
13 activities under subsection (1) of this section shall, in addition
14 to such activities, be required to complete six hours of approved
15 continuing education activities on insurance industry ethics,
16 except that licensees qualified to solicit only crop insurance,
17 only fidelity and surety insurance, or only title insurance
18 shall be required to complete three hours of approved continuing
19 education activities on insurance industry ethics, and in each
20 two-year period commencing on or after January 1, 2000, licensees
21 required to complete approved continuing education activities
22 under subsection (1) of this section shall, in addition to
23 such activities, be required to complete three hours of approved
24 continuing education activities on insurance industry ethics.

25 (3) When the requirements of this section have been met,

1 the licensee shall furnish to the department evidence of completion
2 for the current two-year period, ~~and a filing fee as established by~~
3 ~~the director not to exceed five dollars.~~

4 Sec. 28. Section 44-3909, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-3909 Except as otherwise provided by the Insurance
7 Producers Licensing Act, no individual shall be eligible to apply
8 for a license as an insurance producer unless he or she has
9 completed the following prelicensing education requirements:

10 (1) An individual seeking a ~~property and casualty~~
11 insurance qualification for a license in the life insurance line
12 shall complete at least six hours of education on insurance
13 industry ethics in addition to ~~thirty-four~~ fourteen hours of
14 education in the area of ~~property and casualty~~ life insurance;

15 (2) An individual seeking a ~~life insurance and annuities~~
16 qualification for a license in the accident and health or sickness
17 insurance line shall complete at least six hours of education
18 on insurance industry ethics in addition to fourteen hours of
19 education in the area of ~~life insurance and annuities,~~ accident and
20 health or sickness insurance;

21 (3) An individual seeking a ~~sickness, accident, and~~
22 ~~health insurance~~ qualification for a license in the property
23 insurance line shall complete at least six hours of education
24 on insurance industry ethics in addition to fourteen hours of
25 education in the area of ~~sickness, accident, and health insurance~~

1 of which at least six hours shall be in the area of medicare
2 supplement insurance and long-term care property insurance;

3 (4) An individual seeking a ~~combined life insurance~~
4 ~~and annuities and sickness, accident, and health insurance~~
5 qualification for a license in the casualty insurance line shall
6 complete at least six hours of education on insurance industry
7 ethics in addition to ~~thirty-four~~ fourteen hours of education in
8 the area of life casualty insurance; ~~and annuities and sickness,~~
9 ~~accident, and health insurance and of such thirty-four hours at~~
10 ~~least seventeen hours shall be in the area of life insurance and~~
11 ~~annuities and seventeen hours shall be in the area of sickness,~~
12 ~~accident, and health insurance, and of such seventeen hours in the~~
13 ~~area of sickness, accident, and health insurance at least six hours~~
14 ~~shall be in the area of medicare supplement insurance and long-term~~
15 ~~care insurance;~~

16 (5) An individual seeking a qualification for a license
17 in the personal lines property and casualty insurance line shall
18 complete at least six hours of education on insurance industry
19 ethics in addition to six hours of education in the area of credit
20 insurance;

21 ~~(5)~~ (6) An individual seeking a ~~title insurance~~
22 qualification for a license in the title insurance line shall
23 complete at least six hours of education on insurance industry
24 ethics in addition to six hours of education in the area of title
25 insurance; and

1 ~~(6) An individual seeking an assessment association~~
2 ~~insurance license shall complete at least six hours of education~~
3 ~~on insurance industry ethics in addition to six hours of education~~
4 ~~in the area of the kinds of insurance issued by an assessment~~
5 ~~association; and~~

6 (7) An individual seeking a ~~crop insurance~~ qualification
7 for a license in the crop insurance line shall complete at least
8 three hours of education on insurance industry ethics in addition
9 to three hours of education in the area of crop insurance.

10 Sec. 29. Section 44-3910, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-3910 The prelicensing education requirements of
13 section 44-3909 shall not apply to an individual who, at the time
14 of application for an insurance producer license:

15 (1) Is applying for qualification for the life insurance
16 line of authority and has the certified employee benefit specialist
17 designation, the chartered financial consultant designation, the
18 certified insurance counselor designation, the certified financial
19 planner designation, the chartered life underwriter designation,
20 the fellow life management institute designation, or the Life
21 Underwriter Training Council fellow designation;

22 (2) Is applying for qualification for the accident
23 and health or sickness insurance line of authority and has
24 the registered health underwriter designation, the certified
25 employee benefit specialist designation, the registered employee

1 benefit consultant designation, or the health insurance associate
 2 designation;

3 (3) Is applying for qualification for the property
 4 insurance, casualty insurance, or personal lines property and
 5 casualty insurance line of authority and has the accredited
 6 advisor in insurance designation, the associate in risk management
 7 designation, the certified insurance counselor designation, or the
 8 chartered property and casualty underwriter designation;

9 (4) Has has the chartered property and casualty
 10 underwriter designation, the chartered life underwriter
 11 designation, the registered health underwriter designation,
 12 the certified employee benefit specialist designation, the
 13 certified financial planner designation, the accredited adviser
 14 in insurance designation, the chartered financial consultant
 15 designation, or a master's college degree with a concentration in
 16 insurance from an accredited educational institution;

17 (5) Is an to any individual described in section
 18 44-4056 or 44-4058; or

19 (6) Is a person who or to such other persons as the
 20 director may exempt pursuant to a rule or regulation adopted and
 21 promulgated pursuant to the Administrative Procedure Act.

22 Sec. 30. Section 44-3911, Reissue Revised Statutes of
 23 Nebraska, is amended to read:

24 44-3911 A certificate of completion of the prelicensing
 25 education requirements shall be filed with the director, along with

1 a filing fee as established by the director not to exceed ten
2 dollars.

3 Sec. 31. Section 44-4064, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-4064 (1) Before any license or appointment is issued
6 or renewed under the Insurance Producers Licensing Act or before
7 any appointment is terminated, the person requesting such license
8 shall pay or cause to be paid to the director the following fee or
9 fees, if applicable, as established by the director:

10 (a) For each ~~resident~~ insurance producer license, a fee
11 not to exceed ~~forty~~ one hundred dollars;

12 ~~(b) For each nonresident insurance producer license, a~~
13 ~~fee not to exceed eighty dollars;~~

14 ~~(c) (b)~~ For each annual appointment, a fee not to exceed
15 ten dollars;

16 ~~(d) (c)~~ For each termination of an appointment, a fee not
17 to exceed ten dollars;

18 ~~(e) (d)~~ A late renewal fee not to exceed one hundred
19 twenty-five dollars;

20 ~~(f) (e)~~ A reinstatement fee not to exceed one hundred
21 seventy-five dollars; and

22 ~~(g) (f)~~ For each business entity license, a fee not to
23 exceed fifty dollars.

24 (2) If a licensed person (a) desires to add a line or
25 lines of insurance to his or her existing license, (b) seeks to

1 change any other information contained in the license for any
2 reason, or (c) applies for a duplicate license, such person shall
3 pay to the director a fee established by the director to cover the
4 expense of replacing the license.

5 (3) The director shall not prorate fees imposed pursuant
6 to subsection (1) of this section, and shall not refund fees to any
7 person in the event of a license denial. The director may refund
8 fees paid pursuant to this section if the payment has been made in
9 error.

10 Sec. 32. Section 44-4521, Revised Statutes Supplement,
11 2007, is amended to read:

12 44-4521 (1) ~~An~~ On or after August 1, 2008, an individual
13 may not sell, solicit, or negotiate long-term care insurance unless
14 the individual is licensed as an insurance producer for health
15 or sickness and accident insurance and has completed a one-time
16 training course ~~on or before August 1, 2008,~~ and ongoing training
17 every twenty-four months thereafter. All training shall meet the
18 requirements of subsection (2) of this section.

19 (2) The one-time training course required by subsection
20 (1) of this section shall be no less than eight hours in length,
21 and the required ongoing training shall be no less than four
22 hours in length. All training required under subsection (1) of
23 this section shall consist of topics related to long-term care
24 insurance, long-term care services, and, if applicable, qualified
25 state long-term insurance partnership programs, including, but not

1 limited to:

2 (a) State and federal regulations and requirements and
3 the relationship between qualified state long-term care insurance
4 partnership programs and other public and private coverage of
5 long-term care services, including medicaid;

6 (b) Available long-term care services and providers;

7 (c) Changes or improvements in long-term care services or
8 providers;

9 (d) Alternatives to the purchase of private long-term
10 care insurance;

11 (e) The effect of inflation on benefits and the
12 importance of inflation protection; and

13 (f) Consumer suitability standards and guidelines.

14 Training required by subsection (1) of this section shall
15 not include any sales or marketing information, materials, or
16 training other than those required by state or federal law.

17 (3)(a) Insurers subject to the Long-Term Care Insurance
18 Act shall obtain verification that the insurance producer receives
19 training required by subsection (1) of this section before a
20 producer is permitted to sell, solicit, or negotiate the insurer's
21 long-term care insurance products. Records shall be maintained in
22 accordance with section 44-5905 and shall be made available to the
23 director upon request.

24 (b) Insurers subject to the act shall maintain records
25 with respect to the training of its producers concerning the

1 distribution of its partnership policies that will allow the
2 director to provide assurance to the Department of Health and
3 Human Services Finance and Support that producers have received
4 the training required by subsection (1) of this section and that
5 producers have demonstrated an understanding of the partnership
6 policies and their relationship to public and private coverage of
7 long-term care, including medicaid, in this state. These records
8 shall be maintained in accordance with section 44-5905 and shall be
9 made available to the director upon request.

10 (4) The satisfaction of the training requirements in any
11 state shall be deemed to satisfy the training requirements of the
12 State of Nebraska.

13 (5) The training requirements of subsection (1) of this
14 section may be approved as continuing education courses pursuant to
15 sections 44-3901 to 44-3913.

16 Sec. 33. Section 44-6009, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-6009 Negative trend, with respect to a life and
19 health insurer, means a negative trend over a period of time, as
20 determined in accordance with the trend test calculation included
21 in the life risk-based capital instructions.

22 Sec. 34. Section 44-6016, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-6016 (1) Company action level event means any of the
25 following events:

1 (a) The filing of a risk-based capital report by an
2 insurer or a health organization which indicates that:

3 (i) The insurer's or health organization's total adjusted
4 capital is greater than or equal to its regulatory action
5 level risk-based capital but less than its company action level
6 risk-based capital; ~~or~~

7 (ii) If a life and health insurer, the insurer has total
8 adjusted capital which is greater than or equal to its company
9 action level risk-based capital but less than the product of its
10 authorized control level risk-based capital and 2.5 and has a
11 negative trend; or

12 (iii) If a property and casualty insurer, the insurer
13 has total adjusted capital which is greater than or equal to its
14 company action level risk-based capital but less than the product
15 of its authorized control level risk-based capital and 3.0 and
16 triggers the trend test determined in accordance with the trend
17 test calculation included in the property and casualty risk-based
18 capital instructions;

19 (b) The notification by the director to the insurer or
20 health organization of an adjusted risk-based capital report that
21 indicates an event described in subdivision ~~(1)(a)(i)~~ ~~or~~ ~~(ii)~~
22 (1)(a) of this section unless the insurer or health organization
23 challenges the adjusted risk-based capital report under section
24 44-6020; or

25 (c) If, pursuant to section 44-6020, the insurer or

1 health organization challenges an adjusted risk-based capital
2 report that indicates an event described in subdivision ~~(1)(a)(i)~~
3 ~~or (ii)~~ (1)(a) of this section, the notification by the director to
4 the insurer or health organization that the director has, after a
5 hearing, rejected the insurer's or health organization's challenge.

6 (2) In the event of a company action level event, the
7 insurer or health organization shall prepare and submit to the
8 director a risk-based capital plan which shall:

9 (a) Identify the conditions which contribute to the
10 company action level event;

11 (b) Contain proposals of corrective actions which the
12 insurer or health organization intends to take and would be
13 expected to result in the elimination of the company action level
14 event;

15 (c) Provide projections of the insurer's or health
16 organization's financial results in the current year and at least
17 the four succeeding years in the case of an insurer or at least
18 the two succeeding years in the case of a health organization, both
19 in the absence of proposed corrective actions and giving effect to
20 the proposed corrective actions, including projections of statutory
21 balance sheets, operating income, net income, capital and surplus,
22 and risk-based capital levels. The projections for both new and
23 renewal business may include separate projections for each major
24 line of business and separately identify each significant income,
25 expense, and benefit component;

1 (d) Identify the key assumptions impacting the insurer's
2 or health organization's projections and the sensitivity of the
3 projections to the assumptions; and

4 (e) Identify the quality of, and problems associated
5 with, the insurer's or health organization's business, including,
6 but not limited to, its assets, anticipated business growth and
7 associated surplus strain, extraordinary exposure to risk, and mix
8 of business and use of reinsurance, if any, in each case.

9 (3) The risk-based capital plan shall be submitted:

10 (a) Within forty-five days after the occurrence of the
11 company action level event; or

12 (b) If the insurer or health organization challenges an
13 adjusted risk-based capital report pursuant to section 44-6020,
14 within forty-five days after the notification to the insurer
15 or health organization that the director has, after a hearing,
16 rejected the insurer's or health organization's challenge.

17 (4) Within sixty days after the submission by an
18 insurer or a health organization of a risk-based capital plan
19 to the director, the director shall notify the insurer or
20 health organization whether the risk-based capital plan shall be
21 implemented or is, in the judgment of the director, unsatisfactory.
22 If the director determines that the risk-based capital plan
23 is unsatisfactory, the notification to the insurer or health
24 organization shall set forth the reasons for the determination
25 and may set forth proposed revisions which will render the

1 risk-based capital plan satisfactory in the judgment of the
2 director. Upon notification from the director, the insurer or
3 health organization shall prepare a revised risk-based capital
4 plan which may incorporate by reference any revisions proposed by
5 the director. The insurer or health organization shall submit the
6 revised risk-based capital plan to the director:

7 (a) Within forty-five days after the notification from
8 the director; or

9 (b) If the insurer or health organization challenges
10 the notification from the director under section 44-6020, within
11 forty-five days after a notification to the insurer or health
12 organization that the director has, after a hearing, rejected the
13 insurer's or health organization's challenge.

14 (5) In the event of a notification by the director
15 to an insurer or a health organization that the insurer's
16 or health organization's risk-based capital plan or revised
17 risk-based capital plan is unsatisfactory, the director may, at
18 the director's discretion and subject to the insurer's or health
19 organization's right to a hearing under section 44-6020, specify
20 in the notification that the notification constitutes a regulatory
21 action level event.

22 (6) Every domestic insurer or domestic health
23 organization that files a risk-based capital plan or revised
24 risk-based capital plan with the director shall file a copy of the
25 risk-based capital plan or revised risk-based capital plan with the

1 insurance commissioner of any state in which the insurer or health
2 organization is authorized to do business if:

3 (a) Such state has a law substantially similar to
4 subsection (1) of section 44-6021; and

5 (b) The insurance commissioner of such state has notified
6 the insurer or health organization of its request for the filing
7 in writing, in which case the insurer or health organization shall
8 file a copy of the risk-based capital plan or revised risk-based
9 capital plan in such state no later than the later of:

10 (i) Fifteen days after the receipt of notice to file a
11 copy of its risk-based capital plan or revised risk-based capital
12 plan with the state; or

13 (ii) The date on which the risk-based capital plan or
14 revised risk-based capital plan is filed under subsection (3) or
15 (4) of this section.

16 Sec. 35. Section 44-7508.02, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 44-7508.02 (1) For policy forms to which this section
19 applies as provided in section 44-7508.01, each insurer shall file
20 with the director every policy form and related attachment rule and
21 every modification thereof which it proposes to use. For policy
22 forms to which this section applies, no insurer shall issue a
23 contract or policy except in accordance with the filings that are
24 in effect for such insurer as provided in the Property and Casualty
25 Insurance Rate and Form Act except as provided in subsection (10)

1 or (11) of this section or as provided by rules and regulations
2 adopted and promulgated pursuant to section 44-7514 or 44-7515.

3 (2) Every filing shall state its effective date, which
4 shall not be prior to the date that the director receives such
5 filing.

6 (3) Every policy form filing shall explain the intended
7 use of such policy forms. Filings shall include a list of policy
8 forms that will be replaced when the approval of a filing will
9 result in the replacement of previously approved policy forms. In
10 addition, insurers shall maintain listings of policy forms that
11 have been filed so that such listings can be provided upon request.

12 (4) The director shall acknowledge receipt of a policy
13 form filing as soon as practical. A review of the filing by
14 the director is not required to issue this acknowledgment, and
15 acknowledgment shall not constitute an approval by the director.

16 (5) The director may review a policy form filing at
17 any time after it has been made. The director shall review a
18 policy form filing for insurance covering risks of a personal
19 nature, including insurance for homeowners, tenants, private
20 passenger nonfleet automobiles, mobile homes, and other property
21 and casualty insurance for personal, family, or household needs,
22 within thirty days after the filing has been made. Following
23 such review, the director shall disapprove a filing that contains
24 provisions, exceptions, or conditions that: (a) Are unjust, unfair,
25 ambiguous, inconsistent, inequitable, misleading, deceptive, or

1 contrary to public policy; (b) are written so as to encourage the
2 misrepresentation of coverage; (c) fail to reasonably provide the
3 general coverage for policies of that type; (d) fail to comply with
4 the provisions or the intent of the laws of this state; or (e)
5 would provide coverage contrary to the public interest.

6 (6) If, within thirty days after its receipt, the
7 director disapproves a filing that requires disapproval pursuant to
8 subsection (5) of this section, then a written disapproval notice
9 shall be sent to the insurer. The disapproval notice shall specify
10 in what respects the filing fails to meet these requirements. Upon
11 receipt of the notice of disapproval, the insurer shall cease use
12 of the filing as soon as practical but may use the form for
13 policies that have already been issued or when pending coverage
14 proposals are outstanding.

15 (7) If, within thirty days after its receipt, the
16 director requests additional information to complete review of
17 a policy form filing, the thirty-day review period allowed in
18 subsection (6) of this section shall commence on the date such
19 information is received by the director. If a filer fails to
20 furnish the required information within ninety days, the director
21 may, ~~by written notice sent to the insurer, deem the filing as~~
22 ~~withdrawn and not available for use.~~ disapprove the filing based
23 on the insurer's failure to provide the requested information.
24 Disapproval shall be by written notice sent to the insurer ordering
25 discontinuance of the filing within thirty days after the date of

1 notice.

2 (8) An insurer whose filing is disapproved pursuant to
3 subsection (6) of this section may, within thirty days after
4 receipt of a disapproval notice, request a hearing in accordance
5 with section 44-7532.

6 (9) An insurer may authorize the director to accept
7 policy form filings made on its behalf by an advisory organization.

8 (10)(a) Subject to the requirements of this subsection,
9 policy forms unique in character and designed for and used with
10 regard to an individual risk under common ownership subject to
11 the rate filing provisions of section 44-7508 shall be exempt from
12 subsection (1) of this section.

13 (b) At the earliest practical opportunity, but no later
14 than thirty days after the effective date of the policy using
15 unfiled provisions, the insurer shall provide the prospective
16 insured with a written listing of the policy forms that have not
17 been filed with the director. This requirement does not apply to
18 renewals using the same unfiled policy forms.

19 (c) A policy form that has been used in this state or
20 elsewhere by the insurer for another risk shall not be subject to
21 the exemption provided by this subsection, except that an insurer
22 may use a policy form previously developed for a single risk for a
23 second risk if the policy form is filed within sixty days after its
24 second usage.

25 (d) The exemption provided by this subsection shall not

1 apply to policy forms that, prior to their use by the insurer, had
2 been filed by an advisory organization in this state or had been
3 filed by the insurer in any jurisdiction, regardless of whether
4 approval was received.

5 (e) The director may by rule and regulation or by order
6 make specific restrictions relating to the exemption provided by
7 this subsection and may require the informational filing of policy
8 forms subject to such exemption within a reasonable time after
9 their use. Any such informational filings specifically relating to
10 individual risks shall be confidential and may not be made public
11 by the director except as may be compiled in summaries of such
12 activity.

13 (11) The director may by rule and regulation suspend or
14 modify the filing requirements of this section as to any type
15 of insurance or class of risk for which policy forms cannot
16 practicably be filed before they are used. The director may examine
17 insurers as is necessary to ascertain whether any policy forms
18 affected by such rules and regulations meet the standards contained
19 in the Property and Casualty Insurance Rate and Form Act.

20 (12) If, at any time after the expiration of the review
21 period provided by subsection (6) of this section or any extension
22 thereof, the director finds that a policy form, attachment rule,
23 or modification thereof does not meet or no longer meets the
24 requirements of subsection (5) of this section, the director shall
25 hold a hearing in accordance with section 44-7532.

1 (13) Any insured aggrieved with respect to any policy
2 form filing subject to this section may make written application to
3 the director for a hearing on such filing. The hearing application
4 shall specify the grounds to be relied upon by the applicant.
5 If the director finds that the hearing application is made in
6 good faith, that a remedy would be available if the grounds
7 are established, or that such grounds otherwise justify holding
8 a hearing, the director shall hold a hearing in accordance with
9 section 44-7532.

10 (14) If, after a hearing held pursuant to subsection (12)
11 or (13) of this section, the director finds that a filing does
12 not meet the requirements of subsection (5) of this section,
13 the director shall issue an order stating in what respects
14 such filing fails to meet the requirements and when, within a
15 reasonable period thereafter, such policy form or attachment rule
16 shall no longer be used. Copies of the order shall be sent to
17 the applicant, if applicable, and to every affected insurer and
18 advisory organization. The order shall not affect any contract or
19 policy made or issued prior to the expiration of the period set
20 forth in the order.

21 Sec. 36. (1)(a) A financial conglomerate may submit to
22 the jurisdiction of the Director of Insurance for supervision on
23 a consolidated basis under this section. Supervision under this
24 section shall be in addition to all statutory and regulatory
25 requirements imposed on domestic insurers and shall be for

1 the purpose of determining how the operations of the financial
2 conglomerate impact insurance operations.

3 (b) For purposes of this section:

4 (i) Control has the same meaning as in section 44-2121;
5 and

6 (ii) Financial conglomerate means either an insurance
7 company domiciled in Nebraska or a person established under
8 the laws of the United States, any state, or the District
9 of Columbia which directly or indirectly controls an insurance
10 company domiciled in Nebraska. Financial conglomerate includes
11 the person applying for supervision under this section and all
12 entities, whether insurance companies or otherwise, to the extent
13 the entities are controlled by such person.

14 (2) The director may approve any application for
15 supervision under this section that meets the requirements of this
16 section and the rules and regulations adopted and promulgated under
17 this section.

18 (3)(a) The director shall adopt and promulgate rules
19 and regulations for supervision of a financial conglomerate,
20 including all persons controlled by a financial conglomerate,
21 that will permit the director to assess at the level of
22 the financial conglomerate the financial situation of the
23 financial conglomerate, including solvency, risk concentration, and
24 intra-group transactions.

25 (b) Such rules and regulations shall require the

1 financial conglomerate to:

2 (i) Have in place sufficient capital adequacy policies at
3 the level of the financial conglomerate;

4 (ii) Report to the director at least annually any
5 significant risk concentration at the level of the financial
6 conglomerate;

7 (iii) Report to the director at least annually all
8 significant intra-group transactions of regulated entities within a
9 financial conglomerate. Such reporting shall be in addition to all
10 reports required under any other provision of Chapter 44; and

11 (iv) Have in place at the level of the financial
12 conglomerate adequate risk management processes and internal
13 control mechanisms, including sound administrative and accounting
14 procedures.

15 (c) In adopting and promulgating the rules and
16 regulations, the director:

17 (i) Shall consider the rules and regulations that may
18 be adopted by a member state of the European Union, the European
19 Union, or any other country for the supervision of financial
20 conglomerates;

21 (ii) Shall require the filing of such information as the
22 director may determine;

23 (iii) Shall include standards and processes for effective
24 qualitative group assessment, quantitative group assessment
25 including capital adequacy, affiliate transaction, and risk

1 concentration assessment, risks and internal capital assessments,
2 disclosure requirements, and investigation and enforcement powers;

3 (iv) Shall state that supervision of financial
4 conglomerates concerns how the operations of the financial
5 conglomerate impact the insurance operations;

6 (v) Shall adopt an application fee in an amount not to
7 exceed the amount necessary to recover the cost of review and
8 analysis of the application; and

9 (vi) May verify information received under this section.

10 (4)(a) If it appears to the director that a financial
11 conglomerate that submits to the jurisdiction of the director under
12 this section, or any director, officer, employee, or agent thereof
13 willfully violates this section or the rules and regulations
14 adopted and promulgated under this section, the director may order
15 the financial conglomerate to cease and desist immediately any such
16 activity. After notice and hearing, the director may order the
17 financial conglomerate to void any contracts between the financial
18 conglomerate and any of its affiliates or among affiliates of the
19 financial conglomerate and restore the status quo if such action is
20 in the best interest of policyholders, creditors, or the public.

21 (b) If it appears to the director that any financial
22 conglomerate that submits to the jurisdiction of the director
23 under this section, or any director, officer, employee, or agent
24 thereof has committed or is about to commit a violation of this
25 section or the rules and regulations adopted and promulgated

1 under this section, the director may apply to the district
2 court of Lancaster County for an order enjoining such financial
3 conglomerate, director, officer, employee, or agent from violating
4 or continuing to violate this section or the rules and regulations
5 adopted and promulgated under this section and for such other
6 equitable relief as the nature of the case and the interest of the
7 financial conglomerate's policyholders, creditors, or the public
8 may require.

9 (c)(i) Any financial conglomerate that fails, without
10 just cause, to provide information which may be required under the
11 rules and regulations adopted and promulgated under this section
12 may be required by the director, after notice and hearing, to
13 pay an administrative penalty of one hundred dollars for each
14 day's delay not to exceed an aggregate penalty of ten thousand
15 dollars. The director may reduce the penalty if the financial
16 conglomerate demonstrates to the director that the imposition of
17 the penalty would constitute a financial hardship to the financial
18 conglomerate.

19 (ii) Any financial conglomerate that fails to notify the
20 director of any action for which such notification may be required
21 under the rules and regulations adopted and promulgated under this
22 section may be required by the director, after notice and hearing,
23 to pay an administrative penalty of not more than two thousand five
24 hundred dollars per violation.

25 (iii) Any violation of this section or the rules and

1 regulations adopted and promulgated under this section shall be an
2 unfair trade practice under the Unfair Insurance Trade Practices
3 Act in addition to any other remedies and penalties available under
4 the laws of this state.

5 (d) Any director or officer of a financial conglomerate
6 that submits to the jurisdiction of the director under this section
7 who knowingly violates or assents to any officer or agent of
8 the financial conglomerate to violate this section or the rules
9 and regulations adopted and promulgated under this section may be
10 required by the director, after notice and hearing, to pay in
11 his or her individual capacity an administrative penalty of not
12 more than five thousand dollars per violation. In determining the
13 amount of the penalty, the director shall take into account the
14 appropriateness of the penalty with respect to the gravity of
15 the violation, the history of previous violations, and such other
16 matters as justice may require.

17 (e) After notice and hearing, the director may terminate
18 the supervision of any financial conglomerate under this section if
19 it ceases to qualify as a financial conglomerate under this section
20 or the rules and regulations adopted and promulgated under this
21 section.

22 (f) If it appears to the director that any person
23 has committed a violation of this section or the rules and
24 regulations adopted and promulgated under this section which so
25 impairs the financial condition of a domestic insurer that submits

1 to the jurisdiction of the director under this section as to
2 threaten insolvency or make the further transaction of business
3 by such financial conglomerate hazardous to its policyholders or
4 the public, the director may proceed as provided in the Nebraska
5 Insurers Supervision, Rehabilitation, and Liquidation Act to take
6 possession of the property of such domestic insurer and to conduct
7 the business thereof.

8 (g) If it appears to the director that any person
9 that submits to the jurisdiction of the director under this
10 section has committed a violation of this section or the rules and
11 regulations adopted and promulgated under this section which makes
12 the continued operation of an insurer contrary to the interests
13 of policyholders or the public, the director may, after giving
14 notice and an opportunity to be heard, suspend, revoke, or refuse
15 to renew such insurer's license or authority to do business in this
16 state for such period as the director finds is required for the
17 protection of policyholders or the public. Any such determination
18 shall be accompanied by specific findings of fact and conclusions
19 of law.

20 (h)(i) Any financial conglomerate that submits to the
21 jurisdiction of the director under this section that willfully
22 violates this section or the rules and regulations adopted and
23 promulgated under this section shall be guilty of a Class IV
24 felony.

25 (ii) Any director, officer, employee, or agent of a

1 financial conglomerate that submits to the jurisdiction of the
2 director under this section who willfully violates this section
3 or the rules and regulations adopted and promulgated under this
4 section or who willfully and knowingly subscribes to or makes
5 or causes to be made any false statements, false reports, or
6 false filings with the intent to deceive the director in the
7 performance of his or her duties under this section or the rules
8 and regulations adopted and promulgated under this section shall be
9 guilty of a Class IV felony.

10 (iii) Any person aggrieved by any act, determination,
11 order, or other action of the director pursuant to this section
12 or the rules and regulations adopted and promulgated under this
13 section may appeal. The appeal shall be in accordance with the
14 Administrative Procedure Act.

15 (iv) Any person aggrieved by any failure of the director
16 to act or make a determination required by this section or the
17 rules and regulations adopted and promulgated under this section
18 may petition the district court of Lancaster County for a writ in
19 the nature of a mandamus or a peremptory mandamus directing the
20 director to act or make such determination forthwith.

21 (i) The powers, remedies, procedures, and penalties
22 governing financial conglomerates under this section shall be
23 in addition to any other provisions provided by law.

24 (5)(a) The director may contract with such qualified
25 persons as the director deems necessary to allow the director to

1 perform any duties and responsibilities under this section.

2 (b) The reasonable expenses of supervision of a financial
3 conglomerate under this section shall be fixed and determined
4 by the director who shall collect the same from the supervised
5 financial conglomerate. The financial conglomerate shall reimburse
6 the amount upon presentation of a statement by the director. All
7 money collected by the director for supervision of financial
8 conglomerates pursuant to this section shall be remitted in
9 accordance with section 44-116.

10 (c) All information, documents, and copies thereof
11 obtained by or disclosed to the director pursuant to this section
12 shall be held by the director in accordance with sections 44-154
13 and 44-2138.

14 Sec. 37. Sections 4 and 38 of this act become operative
15 on January 1, 2009. The other sections of this act become operative
16 on their effective date.

17 Sec. 38. Original section 44-789, Reissue Revised
18 Statutes of Nebraska, is repealed.

19 Sec. 39. Original sections 44-349, 44-356, 44-1101,
20 44-1103, 44-1105, 44-1106, 44-1107, 44-1108, 44-1109, 44-1110,
21 44-1111, 44-1112, 44-1113, 44-1114, 44-1115, 44-1521, 44-32,106,
22 44-3901, 44-3902, 44-3904, 44-3909, 44-3910, 44-3911, 44-4064,
23 44-6009, and 44-6016, Reissue Revised Statutes of Nebraska,
24 sections 13-206 and 44-7508.02, Revised Statutes Cumulative
25 Supplement, 2006, and sections 44-1102, 44-1104, and 44-4521,

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1 Revised Statutes Supplement, 2007, are repealed.